

**U.S. INTELLIGENCE AGENCIES AND ACTIVITIES:
THE PERFORMANCE OF THE INTELLIGENCE COMMUNITY**

HEARINGS
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
U.S. HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
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PERFORMANCE OF THE INTELLIGENCE COMMUNITY: THE 1973 MIDEAST WAR

THURSDAY, SEPTEMBER 11, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 2118, Rayburn House Office Building, the Honorable Otis G. Pike, [chairman], presiding.

Present: Representatives Pike, Stanton, Dellums, Murphy, Milford, Hayes, Lehman, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; and Gregory G. Rushford, staff investigator.

Chairman PIKE. The committee will come to order.

Before proceeding with our witnesses today on the subject of the performance of the intelligence community immediately preceding the outbreak of the Arab-Israeli war in 1973, I just want to bring the members of the committee up to date on what has transpired as far as the business of obtaining documents is concerned since we met on yesterday and since you authorized the issuance of subpoenas.

As I told you at the meeting yesterday, we had a promise at 10:45 yesterday morning that no subpoenas would be necessary and the documents would be forthcoming by 2 o'clock yesterday afternoon. I did not say that the commitment also was that the documents would basically be in unclassified form, with those particular portions which were deemed to be highly sensitive circled.

At 2 o'clock yesterday afternoon nothing had arrived and I received, instead of documents, a phone call. The phone call said two things: That documents were on the way, but that they would come in a form more highly classified than highly classified; that is, they were only being loaned to the committee and we could not reveal their contents in any manner without the consent of the executive branch.

I had three different people sign covering letters to this effect.

I was told at that time the documents would be there by 4 o'clock in the afternoon. We proceeded to prepare and sign the subpoenas. I guess they got served.

At 4 o'clock in the afternoon I got not a phone call, but a visit. No documents.

In the meantime, in fairness, a few pieces of paper had come in from earlier letters which we had sent out.

The visitors, who were from the White House, advised me they couldn't have all the papers by 4 o'clock but they were on the way and would certainly be there last evening.

At approximately 6:45 last evening, I received another phone call asking if it would be all right if the documents were delivered this morning and I said yes, provided they were there at 9 o'clock.

They were not there at 9 o'clock, but I got a phone call saying the documents were on the way.

At about 9:20 some documents were delivered. I do not, by any means, want to indicate that all which we requested was delivered or even all that we had subpoenaed was delivered. It was not delivered.

The requests which we made were, I believe, reasonable. The end product of our intelligence dollar and our intelligence efforts ought to be intelligence and what we were looking for was, essentially, pieces of paper. We were looking for a week's work of bulletins like this [indicating] from the DIA and from the CIA and from the NSA.

We have at this point 3 days' worth from NSA, a week's worth from DIA, and excerpts from bulletins of the CIA.

Mr. Rogovin has advised me he has the full bulletins with him which will be made available to the committee at some time.

I give you this just so you will understand why you sometimes are unable to get quite the briefings you would like to get before the meetings start.

It is very difficult to brief the members based on pieces of paper which we do not have.

Our principal witness this morning will be Mr. Ray Cline who, at the time of the outbreak of the Arab-Israeli war in 1973, was the head of Intelligence and Research for the Department of State.

Before you start, Mr. Cline, I do have to clear up one thing that was in the paper this morning, in which I was quoted as having said that the NSA accurately predicted the outbreak of the war. I made no such statement. I was present when somebody else made such a statement and my silence was assumed to be an endorsement of that statement.

I think, as the day progresses, we will see that that statement was not accurate.

Mr. Cline, please go ahead.

**STATEMENT OF RAY S. CLINE, EXECUTIVE DIRECTOR OF STUDIES,
CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES,
GEORGETOWN UNIVERSITY; FORMER DEPUTY DIRECTOR FOR
INTELLIGENCE, CIA, AND DIRECTOR OF INTELLIGENCE AND RE-
SEARCH, U.S. DEPARTMENT OF STATE**

Mr. CLINE. Mr. Chairman, and gentlemen, I am grateful for this opportunity to say something about the performance of the U.S. intelligence agencies. These agencies, especially CIA, have been subjected to a great deal of criticism, some of it rather extravagant in the past year, and these criticisms have filled our newspapers and TV screens for a long time.

I think a study of the performance of our intelligence agencies will show a rather high quality of achievement and that the mistakes which they have made in the past are minor in comparison.

I believe I know something about the subject that we are going to discuss today because of my 30 years in intelligence in the U.S. Government, beginning in the Navy in cryptanalysis in World War II.

I was also in OSS. I served many years in CIA. Four of those years as Deputy Director for Intelligence and, as the chairman has said, I was Director of Research and Intelligence in the State Department in 1973. I resigned from the Government at the end of October, effective in November 1973.

I think the public inquiry and, to a certain extent, the congressional inquiry today, has largely been on the wrong track. They are pre-occupied with specific errors made by CIA over its 28 years of existence. I do not doubt that mistakes were made, and it is fair to criticize them, but what the Nation needs is an analysis, an inquiry that will bring about a better understanding of the intelligence system; how it works; what it produces, and what it contributes to the welfare of the country.

We should be examining how well the Agency does its job rather than looking for scandals and disasters.

I hope this committee, Mr. Chairman, will address itself to a truly critical intelligence problem, which most of the investigations to date have not attacked and they certainly have not helped the problem.

I refer to the need for maintaining a highly professional, sophisticated intelligence research analysis and reporting capability at a high level in our national decisionmaking process.

Alleged cloak and dagger misdeeds divert attention from the fact that our central intelligence system is in some difficulty for entirely different reasons. It has not been as effective as it could be or should be in its crucial central task of coordinating and evaluating information relating to national security and alerting appropriate policy level officials to foreign dangers.

That phrase "coordinating and evaluating" is a paraphrase of the language in the National Security Act, where they say "correlate and evaluate information relating to national security."

Now, our Presidents and our high officials in the State Department and the Defense Department cannot make good foreign policy decisions without comprehensive, objective, honest intelligence evaluations of foreign situations and their meaning for the security of the United States, and to provide that kind of intelligence foundation for decisionmaking was the reason CIA and the other agencies constituting the intelligence community—the agencies of the Defense Department and the State Department which work on intelligence—were established.

If the intelligence community cannot do its job well, the country is in trouble. I submit that in recent years the work of intelligence analysis and preparation of estimates has been rendered much less effective than it was in earlier years—before 1969, for example.

I do not think that the prolonged attention to the reports about misdeeds of CIA has helped this process.

If I may be just a little frivolous, Mr. Chairman, I feel, in attacking the problems of the intelligence community, our journalists and, to some extent others, have acted as if they were doctors examining a patient for measles and perhaps cutting off a leg when the patient really has heart trouble.

I think our intelligence community may have some symptoms of heart disease and that is what I would like to talk about today.

If the committee will address itself to this matter, it will do a valuable service to everyone.

Chairman PIKE. That is why we are here in this fashion on this day.
Mr. CLINE. Thank you, sir.

We need a first-class intelligence service. This is a troubled international world and there are tremendous conflicts in it and the intelligence community is equipped and at its best does provide the warning of the dangers in the world and gives an analysis of the situation which helps policymakers decide what to do about them.

What is wrong is that the political decisionmaking process of this Government became distorted in the later years of the Nixon administration by a passion for secrecy that made it very difficult for intelligence analysts to do their work well.

I need not say that this may have caused some difficulty among the public and in the Congress in figuring out what was going on, but the last 5 or 6 years that I was in Government were the only years in which senior intelligence officers in charge of vital analytical functions also could not find out how to assist our policymaking process.

This situation was compounded when the State Department, as well as the National Security staff, were subordinated to a single official. It made it very difficult for senior officers of the intelligence community to insure that accurate, perceptive assessments of foreign situations reached the top in decisionmaking.

Our National Security Council was established in the same act in 1947 which set up the Central Intelligence Agency and I believe that in the later Nixon years this machinery atrophied and became so constricted in its operations that it did not provide the right arena for intelligence to be used effectively.

I decided to retire from the Government on October 1973—not angry, but as I said at the time, a little sorry about the political climate in Washington and what seemed to be happening to what had been the best intelligence-collecting and analyzing system in the world. That is the U.S. intelligence community.

Since that time the attacks on CIA, and the press have further weakened the system at home and abroad; they have lowered morale of able public servants and guaranteed that the most fundamental decisions in our Government are made without the kind of intelligence analysis that is needed.

I touched on some of this matter in an article published last year by Foreign Policy magazine called "Policy Without Intelligence." I hope, Mr. Chairman, it can be incorporated by reference.

Chairman PIKE. Without objection, it will be included in the record.

[The article is printed on pp. 865-879 of the appendixes of these hearings.]

Mr. CLINE. I would like to dwell on the main points germane to the questions you have raised.

I would put these points simply in the form of succinct recommendations.

The National Security Council of the United States should meet regularly with the President in the chair to hear unvarnished, straightforward intelligence reports and estimates by the senior intelligence officers of the State Department, the Defense Department and the CIA on matters likely to require national security decisions. The

Secretary of State and the Secretary of Defense should be present and be prepared to bring in foreign policy and military policy recommendations.

The Assistant to the President for National Security Affairs, who should not hold any other portfolio, should act as an honest broker, responsible only for insuring that essential information and recommendations reach the President.

Now, the professional corps of senior public servants should be brought into the political process of policy planning and, at the appropriate levels, decisionmaking, not only to contribute light and clarity to this process, but to enable them subsequently to explain the thinking lying behind the final policy decisions made. These matters should be explained to appropriate members of the news media, the Members of Congress and the interested public.

We should move away from the Delphic system of policymaking whereby the only information available on the rationale of critical national decisions is the public pronouncements of top officials after the fact. Those pronouncements are sometimes a little Delphic too.

International agreements and commitments ought to be explained candidly, not presented as part of a mysterious conceptual framework which hardly anyone is allowed to glimpse in its entirety, let alone to criticize.

I do not see how a consensus in support of our foreign and military policy can be built in any other way.

The third point I would like to recommend is that the White House should discontinue the practice of suppressing dissemination of intelligence data related to international negotiations at a high level of our Government, particularly negotiations involving the President and the Assistant for National Security Affairs.

At least a few senior officials in our Government and a few senior officials in the intelligence community should see all of the data about foreign actions, foreign statements, foreign reactions, relating to important policy issues.

They should see that kind of data about what foreign people are saying to our principal leaders, even in sensitive policy areas like our policy toward the Soviet Union our policy toward the People's Republic of China, our disarmament policy. It is not safe to let these matters be decided by a small group and certainly not by any one man.

Keeping the negotiating process secret to such an extent means that the nuances of foreign behavior and views which could be detected by intelligence experts may go unnoted by busy top-level officials and not taken into account in final decisions.

Finally, I feel that the details of what foreign officials say in negotiating sessions should be made a matter of record, even if those sessions are with White House emissaries, and made available for examination by professional intelligence experts who know and have studied all their lives the behavior patterns of the foreign countries involved. This means the positions taken by Soviet, Chinese, or North Vietnamese officials in discussions held with White House representatives would be available for analysis by experts not directly involved in the pros and cons, the successes and the failures of the negotiations, so that hidden snags or unforeseen consequences—some of them perhaps long-range consequences—could be brought out. This is the kind of

assessment that the senior U.S. intelligence officers ought to be providing regularly in the interests of objectivity and prudence in our national policy.

That the substance of such conversations were seldom made available to anyone in the State Department and CIA in the Nixon years, and certainly to very few, if any, in the intelligence community, is, in my view, a much greater scandal than any so far revealed about the intelligence agencies.

To remedy these situations which I have described would require simply a finding by Congress and a concurrence by the administration that a central research and analysis facility in the field of international strategy and foreign policy, which now exists somewhat fragmented in the various intelligence agencies, is essential to provide objective assessments of foreign situations to the National Security Council and to the Congress at appropriate levels of classification for security, of course. These assessments should be disseminated to appropriate officials without the possibility that the information and views contrary to White House policy would be suppressed.

Many examples of the secrecy in which China policy was reversed, a somewhat one-sided détente with the Soviet Union made, and the Arab-Israeli hostilities of October 1973 dealt with, can be discovered by this committee.

Some salient points on the latter subject, which you have selected to address yourself to this morning, are touched on in the article to which I referred, written about 9 months ago.

I am sure the committee will know where to look for information on the extent to which key officers of the intelligence community were brought into the ongoing negotiating and decisionmaking process sufficiently to permit them to contribute sophisticated, accurate analysis to all senior officials who have a rightful interest in the policy being arrived at.

I would like to see the Congress turn its attention to how intelligence should be formulated and used in national security and foreign policy decisions. I am sure there is room for improvement.

As to the initial inquiry and some of the shortcomings of this system, I suggest you look closely at the handling of intelligence concerning the possibility of Arab-Israeli hostilities in 1973, as you have proposed to do. I have not been able to examine the official files of this period, so I am speaking from recall, which is rather vivid, of that period.

In May 1973, a national intelligence estimate, the highest level analytical paper produced in the intelligence community, was prepared, giving arguments for and against the danger of war, and concluding that although there was a serious danger of war between the Arab and Israeli forces, chances of hostilities occurring were probably less than even in the immediate future.

I do not remember the precise language, but I think this was the content.

It predicted that the danger would increase if Egypt did not get political results which it wanted during that summer.

In passing this estimate up the line to the Secretary level in the State Department, I pointed out on behalf of the Bureau of Intelligence and Research, on May 31, 1973, that State intelligence experts considered the risk of hostilities even a little more urgent and troublesome than the interagency paper had indicated. I said that if no political solution to the Arab-Israeli impasse occurred—and I can quote this one sentence—"the resumption of hostilities by autumn will become a better than even bet."

My memorandum specifically referred to the possibility of prolonged oil embargoes and concluded "the stakes at risk are thus very high."

As far as I can tell, nobody at the policy level paid much attention to these grave warnings. During the summer Secretary Rogers was eased out of his job so that the Assistant to the President for National Security Affairs could be, concurrently, Secretary of State. President Nixon, for reasons related to Watergate which later became clear, abdicated virtually all responsibility for foreign policy. It was very difficult for intelligence officers to make any impact on the sharply constricted and overengaged center of decisionmaking authority.

During September and October the new Secretary of State plunged into a round of international discussions with Soviet, Arab, and Israeli officials about the Mideast. Most of these talks took place in New York where the U.N. notables were collected. I saw the new Secretary of State once, for an hour, for a serious discussion in this period. Hardly anyone else at State saw him at all except for a formal greeting speech in the inner courtyard of the State Department. Even when he was in Washington, he spent a great deal of his time at the old stand in the White House, keeping in touch with the increasingly anguished President.

The views of the Secretary of State in this period are set forth in detail—accurately as far as I know—in a book entitled "Kissinger" by Marvin and Bernard Kalb, pages 450–461. From all his diplomatic discussions until Egypt and Syria actually attacked on October 6, the Secretary of State evidently thought war was unlikely and that the greatest danger was an Israeli preemptive strike, which he fiercely warned the Israelis not to make. Of course, the Israelis did not make such a strike and received the full brunt of the Arab attack from defensive positions.

Throughout this period I never saw and I imagine no senior intelligence officer ever saw a memorandum of record on what Soviet officials or any others were saying on this subject in their talks with the Secretary of State.

This is especially interesting because the Soviet Union was given advance warning of the attack by Sadat, and in fact withdrew Soviet dependents of their advisers in both Egypt and Syria from Cairo and Damascus on October 4, 2 days before war broke out.

According to the so-called détente treaties, I believe the Soviet Union is obligated to consult with the United States on threats to peace. I simply do not know whether the Secretary of State or any other official received any tipoff from Ambassador Dobrynin or any other Soviet official, or if some signal was attempted and it was missed in the conversation.

In all my years in the State Department as Chief of Intelligence, I never saw any record of the many conversations between White House officials and senior Soviet officials. If these had been available for systematic study by Soviet experts, it is conceivable that some of the rather naive steps taken in Presidential negotiations with the Soviet Union might have been avoided.

One last somewhat technical, but revealing, detail about intelligence during the October 1973 crisis may be worth calling to your attention because it illustrates my point about intelligence being only as good as the use of intelligence at the decisionmaking level.

By Friday, October 5, just before war broke out on Saturday, October 6, my staff and I had concluded that hostilities probably were imminent. Late that evening I reviewed a draft memorandum for the Secretary and requested my Mideast staff officers to tell the Bureau of Near Eastern Affairs that we had reached this conclusion and to request the State Department Secretariat to get the message to the Secretary.

I was told later—I cannot confirm this from first-hand experience—that the Secretariat and the permanent staff of the Secretary did not want to trouble him at that late hour in New York, 8 or 9 o'clock in the evening.

When I left my office that evening, I instructed my staff to prepare a formal memorandum on this subject for the Secretary and send it to New York by pouch the next morning. Hostilities, of course, had begun before it was finished.

Probably in the light of hindsight, I should have overridden the reluctance of the personal staff of the Secretary and made the call to New York personally, myself, that night. I have made such calls to other officials when I felt intelligence situations were urgent, but in this case I did not.

In any case, it would not have made much difference in terms of action, but at least it would not have been true—if it was true as reported by the Kalb brothers, Marvin and Bernard Kalb—in their book about Kissinger—that when the Secretary of State went to bed that night "The Secretary was sure that there wouldn't be a war."

Gentlemen, I give this little story to illustrate how hard it was in those years for intelligence officers to do their job, to find out what was going on at high levels that might forecast future events and even to communicate to the top level the findings they felt to be important.

This is the situation which I think should be remedied if it is in any way possible to do so. Thank you very much.

Chairman PIKE. Thank you very much, Mr. Cline.

Before we have questioning by the members of the committee, I am going to ask Mr. William Parmenter of the CIA to read excerpts from a post mortem on the intelligence performance at the time of the Mideast war, or shortly after.

The post mortem was done shortly after the Mideast war. These particular documents, as of yesterday as I understand it, were top secret, sensitive, but today they have been declassified. Correct?

Mr. ROGOVIN. Certain portions of the documents that have been requested are available and there have been some deletions.

The purpose of the deletions will be apparent. I have some copies that committee members may wish to read along with.

STATEMENT OF WILLIAM K. PARMENTER, DIRECTOR, CURRENT INTELLIGENCE, CIA; ACCOMPANIED BY MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DCI, AND MAJ. GEN. HOWARD P. SMITH, USAF, DIRECTOR OF INTELLIGENCE, U.S./EUROPEAN COMMAND, STUTTGART, GERMANY

Mr. PARMENTER. These are excerpts from the principal conclusions and recommendations of a post mortem done by the intelligence community itself on its performance in the Middle East war situation and predicting the Middle East war:

"1. There *was* an intelligence failure in the weeks preceding the outbreak of war in the Middle East on October 6. Those elements of the intelligence community responsible for the production of finished intelligence did not perceive the growing possibility of an Arab attack and thus did not warn of its imminence.

"The information provided by those parts of the community responsible for intelligence collection was sufficient to prompt such a warning. Such information (derived from both human and technical sources) was not conclusive, but was plentiful, ominous, and often accurate.

"2. Our post mortem survey suggests there were errors of evaluation among all producing offices. These can be attributed, in part, to attitudes and preconceptions lying behind the analysis, and also to various systematic problems affecting the analytical effort.

"Certain substantive preconceptions * * * turned the analyst's attention * * * toward political indications that the Arabs were bent on finding nonviolent means to achieve their objectives and away from indications (mainly military) to the contrary.

"It is true * * * the analyst was faced with the tremendously demanding task of discriminating between the good and the bad in the flow of information crossing his desk. And the machinery of which he is a part did not always make his task easier or provide him with systematic ways to challenge the quality of his own assessments.

"3. We preliminarily recommend: that (a) efforts be made to further attune aspects of the collection system to the needs of the analytical systems; (b) regular systems be established to encourage analysts to exchange views and challenge consensus and to improve their ability to evaluate data; (c) the community's warning system be revamped and the language of its issuances be designed to clearly reflect degrees of probability; (d) the community consider the advisability of adopting a coherent national family of products for publication during periods of crisis; and (e) the community provide for continuing assessments of the handling of intelligence during crises and potential crises.

"4. Finally, our preliminary post mortem report has some implications for the general problem of resource allocation within the community. If it is true in this instance that the collection effort was generally adequate but that our analytical effort was deficient, then a program to improve the latter will oblige us to try to augment the quantity, improve the environment, and add to the quality of the manpower which devotes itself to the production of finished intelligence. This in turn might require us to find additional resources, and these might have to be drawn in part from other areas of effort within the community.

"I. Key questions.

"The performance of the intelligence community during the period preceding the outbreak of the recent war in the Middle East has been subjected to serious and persistent criticism. Specifically, it is charged the community: (1) misinterpreted the attitudes and motives of the Arabs toward each other, toward Israel, and toward the big powers; (2) misestimated both Arab and Israel military capabilities, inaccurately downgrading the former and excessively exalting the latter; (3) misread a series of political and military developments, particularly during the summer and fall; and (4) as a consequence of all this, misinterpreted Arab intentions in September and early October.

"This paper addresses these charges. In the process, an effort is made to provide preliminary answers to several key questions:

"A. Was there, in fact, an intelligence failure during the period leading up to the hostilities, and, if so, what was the nature of that failure?

"B. As background and documentation for A. (above), what information, specifically, did the various intelligence agencies receive (from various collection efforts) and what, specifically, did they produce as finished, analytical intelligence during the period in question?

"C. If the notion of failure is indeed substantiated in the preceding sections, the question then must be, essentially, what happened? What, in other words, were the principal reasons for the failure, as best we can identify at this early date?

"D. Again assuming serious shortcomings in the community's performance, can we identify some possible remedies and in this way help to avoid similar problems in the future?

"II. The community's performance.

"The problem of whether there was or was not an intelligence 'failure' concerning the Middle East in 1973 can be subdivided into three primary questions:

"(1) Were intelligence analysts given enough information in time to conclude (before October 6) that the possibility of war was sufficiently serious to justify some form of warning to intelligence consumers?

"Yes, community analysts were provided with a plentitude of information which should have suggested, at a minimum, that they take very seriously the threat of war in the near term.

"Though not conclusive, and, though much of it could be explained away as signifying a rehearsal rather than a main event, data from a variety of sources indicated in September that something very big was brewing in both Egypt and Syria. This, together with a general awareness (confirmed again in the spring of this year '—that is 1973—') that Sadat wished to keep his military options open, should have led the analysts to assign far more weight to the possibility that Sadat's intentions were hostile.

"(2) Assuming that the information made available to them did indeed seem to warrant or demand such forewarning, did the analysts, in fact, effectively utilize it?

"No, as indicated, the assessments which appeared in various intelligence periodicals, spot reports, and memorandums did not sufficiently utilize the information available and consequently did not provide a warning of impending hostilities.

"A thorough search of the material issued prior to October 6 has failed to turn up any official statement from any office or committee responsible for producing finished, analytical intelligence which contributed anything resembling a warning, *qua* warning.

"There was some rather timid cautionary advice, of the sort emphasized below, in quotations from two assessments:

" 'We continue to believe that an outbreak of major Arab-Israeli hostilities remains unlikely for the immediate future, although the risk of localized fighting has increased slightly.' That is October 4, 1973.

" 'There are reports that Syria is preparing for an attack on Israel but conclusive evidence is lacking. In our view, the political climate in the Arab States argues against a major Syrian military move against Israel at this time. The possibility of a more limited Syrian strike—perhaps one designed to retaliate for the pounding the Syrian Air Force took from the Israelis on September 13—cannot, of course, be excluded.' INR memorandum to the Secretary, September 30, 1973.

"But these qualifications deal only with the possibility of small-scale military actions. They thus could not have served as warnings of major hostilities even had they been far less diffident than they, in fact, were.

"(3) If analysts did not provide forewarning, what did they offer in its stead? Instead of warnings, the community's analytical effort in effect produced reassurances. That is to say, the analysts in reacting to indicators which could be interpreted in themselves as portents of hostile Arab actions against Israel, sought in effect to reassure their audience that the Arabs would *not* resort to war, at least not deliberately.

* * * * *

"There were many reasons why the intelligence analysis, which reached the consumers conveyed these eventually reassuring messages, not all of them good. But surely it will be recalled, as analytical shortcomings are identified in this paper, that the hindsight of the post mortem process bestows an element of wisdom which is denied those—in this instance intelligence analysts—who must deal in foresight. Indeed, what may seem so clear now did not, *could* not, seem so clear then.

"Still, there is no gain saying the judgment that, whatever the rationale, the principal conclusions concerning the imminence of hostilities reached and reiterated by those responsible for intelligence analysis—were quite simply, obviously, and starkly wrong."

[NOTE.—The transcript of that portion of the Mideast post mortem which Mr. Parmenter read above was not precisely in the words of the post mortem itself. It has been conformed to the original text by the committee staff.]

Chairman PIKE. Mr. Parmenter, before we go into questioning, would you tell me why you have omitted from your sanitized statement here the actual predictions, as contained in the report from which you read; that is, the DIA intelligence summary statement of October 3, 1973? I want you to look at what the original report says and tell me why we should not, here in open session, hear what the DIA actually said on October 3, 1973.

Mr. PARMENTER. Would you help me a little, Mr. Chairman, by referring to a page?

Chairman PIKE. It is page 3 of the report and it is about the middle of the page following the word "thus."

Mr. PARMENTER. There are sources and methods here that we will be happy to discuss in executive session.

Chairman PIKE. Sources and methods in that statement?

Mr. PARMENTER. Yes, sir.

Chairman PIKE. I find that incredible.

How does that differ from the one you read on the preceding page as far as sources and methods are concerned?

Mr. ROGOVIN. Mr. Chairman, may I respond. The editing of the documents, as requested by your chief counsel, was conducted yesterday by others than Mr. Parmenter. The decisions made at that time were made on the basis of the knowledge of those people. The process of making the deletions was made so that this material could be made available to you, and I think at this point it would be unfair to ask Mr. Parmenter to respond to decisions regarding the reasons for deletions that were made by other people.

Chairman PIKE. Were you at the meetings when these decisions were made?

Mr. ROGOVIN. I was.

Chairman PIKE. Then I will ask you to respond to this particular statement, which is the blandest general conclusion. It is a conclusion. That is all it is. It doesn't reveal any source, it doesn't reveal any method. It just says what the DIA thought was going to happen.

Mr. ROGOVIN. In the minds of the men who were making the deletions—and most of the material that you asked for is in unsanitized form and available for this hearing—in the minds of those men, these were matters to be deleted because of sources and methods, and I am not in a position to second-guess them.

Chairman PIKE. I will ask the members of the committee to look at the language to which I am referring. The middle of page 3 in the document labeled, "A performance of the Intelligence Community before the Arab-Israeli War of October 1973." The quote attributed to the DIA, quoted from the DIA intelligence summary of October 3, 1973. And I would ask the members of the committee if anyone feels that the reading of that particular one sentence would reveal a source or a method.

Mr. TREEN. From a reading of the sentence one could not fairly say it would reveal a source. Nor do I think I am intelligent or wise enough to define perhaps some way in which it would, but it seems we should give the Agency the opportunity, if it insists, to explain why there might be some way that is not apparent. It is impossible for me to determine that there is not some way in which it might be connected up.

Chairman PIKE. We have two witnesses here from the Agency and I will be delighted to have them explain how the reading of that particular sentence could reveal either a source or a method.

Mr. TREEN. Mr. Chairman, if I might say, the point is that the explanation of the sentence could, of course, reveal that which they don't want to reveal. What is wrong with going into executive session to make that determination and then come back into open session, if you wish, or the committee wishes?

Chairman PIKE. What is wrong with it is, all we have been confronted with since we started is delay and reluctance. All it would do would be to cause more delay. I am trying to get on the record the performance of the intelligence community at this time, and the performance can only be based on what they said.

Mr. TREEN. Mr. Chairman, may I respond?

I share your desire and your goals absolutely and completely. If you are talking about a delay long enough to clear the room so they can make an explanation, I don't think that is a substantial delay with regard to events that occurred 2 years ago.

Chairman PIKE. Let's just go into that a little bit. Every time we go into executive session it takes 45 minutes while somebody sweeps the room and looks to see whether anything is bugged.

Do you suppose, Mr. Rogovin, that you could explain the necessity for deleting that and how that sentence would reveal a source or a method without the necessity of sweeping this room?

Mr. ROGOVIN. Mr. Pike, yesterday afternoon Mr. Field asked if it were at all possible to assist this committee by taking certain portions of a post mortem and making them available to the public. Initially we were asked to go through the whole post mortem and to strike those portions that were "source-method" problems. I indicated it would probably go a lot easier for us and we might be able to be of greater assistance if he would indicate those portions of the post mortem that were of primary concern to the committee and that he wanted to have read into the record.

He came back and advised us it was the first six pages and some additional material.

We worked on that problem along with a number of other problems. As you will recall, today's session was originally scheduled for a totally different topic. We went to work on Mr. Field's request—

Chairman PIKE. I don't know who is scheduling the sessions, Mr. Rogovin, but all I can say is no one that I am aware of scheduled a session on a different topic, and I actually thought I was scheduling them.

Mr. ROGOVIN. We ought to get our instructions from the Chair because we have gotten numerous requests and spent countless hours with members of your staff involved in a procurement area.

Chairman PIKE. There is no question that we are going to have hearings on procurement.

Mr. ROGOVIN. And we were advised the hearings would begin today. As a consequence, the subpoenas that were issued for requested materials were necessary because the staff had indicated to us that there was a different time schedule. Now, we tried to come to grips with the problem. We did the best we could at the time.

Chairman PIKE. Mr. Rogovin, I hear everything you are saying but you haven't answered my question. All I am asking you is, could you tell us why the reading of this just plain, bland conclusion by the DIA as to the likelihood of the outbreak of war would reveal a source or a method?

Mr. ROGOVIN. I will assume that the reason for deletion was because of the manner in which the information was secured—

Chairman PIKE. It doesn't say how the information is secured. This is a conclusion.

Mr. ROGOVIN. Mr. Pike, you are asking us to play games, gambling games, with sources the Agency has——

Chairman PIKE. There isn't a source in there. There isn't a hint of a source in there. This is a conclusion made by the DIA.

Mr. ROGOVIN. This deals with capabilities and the manner in which capabilities are obtained. I think it is totally unfair of you not to allow an accurate response to be made by those who made the deletions, rather than to bait agency representatives attempting to come to grips with the request your committee has made.

Chairman PIKE. What you are doing here, Mr. Rogovin, is putting this committee in the position, in the eyes of the public, of pretending that there is something in this sentence which would reveal a source or a method.

Mr. ROGOVIN. I am only asking——

Chairman PIKE. All we are trying to do is tell the public what the DIA concluded.

Mr. ROGOVIN. Mr. Chairman, I am only asking you for the short period of time necessary to find out the reasons the individuals had in making this deletion. I can't imagine it would so up-end the committee's activities that we couldn't come back to this at a later time.

Chairman PIKE. Mr. Rogovin, I find, as I look at what has been deleted and what has been omitted and what has been retained and read, differs not as to sources or methods, not as to the necessity of protecting the sensitive portions but also raises question as to whether it is in fact rather self-serving, or whether it is in fact rather damaging——

Mr. ROGOVIN. Damaging? This post mortem starts off by saying there was an intelligence failure. There is a very honest report that reflects absolute failure. How can it be more damaging to the intelligence community?

Chairman PIKE [continuing]. That was a conclusion, and I agree with you. It is very damaging, and you did read it. The conclusion. I am asking you to read a different conclusion, the actual language of what the DIA concluded in this regard. Not one source, not one method.

Mr. ROGOVIN. Would it be unreasonable to request of the committee that amount of time necessary to make a phone call to the individuals who made the judgments and report back to you? This is one sentence. We have six pages of text here.

Chairman PIKE. I am going to make the same request as to every single one of those.

Mr. ROGOVIN. Then I think you will have to meet in executive session and allow those who made the judgment to explain precisely what materials are reflected here.

Chairman PIKE. All right, I will tell you what we will do. We will now proceed with the questioning of Mr. Cline, and you are free to go make a phone call.

I guess I will ask the first questions in this regard.

Mr. Cline, did we have reason to believe immediately prior—I don't mean "we." Did you have reason to believe, immediately prior to the outbreak of the Arab-Israeli war, that the Russians believed a war was coming?

Mr. CLINE. Yes sir.

Chairman PIKE. And you had reason to believe this before the outbreak of the war?

Mr. CLINE. A very short time before. About 2 days before, and certainly a day before.

Chairman PIKE. Two days before.

Did this conclusion, or this belief on your part, get communicated to the President?

Mr. CLINE. I do not know.

Chairman PIKE. Did it get communicated to the Secretary of State?

Mr. CLINE. I think it was but I cannot say from my own personal observation.

Chairman PIKE. Did it get transmitted to the Secretary of State before the outbreak of the war?

Mr. CLINE. It was reported in writing in ways which normally would get to the Secretary of State.

Chairman PIKE. You prepared a memorandum, didn't you?

Mr. CLINE. I referred to a memorandum which was not delivered, Mr. Chairman.

Chairman PIKE. Right. The memorandum was never delivered before the outbreak.

Mr. CLINE. But the report on the withdrawal of the advisers from the Middle East, the Russians, was available on Thursday before war broke out, on a Saturday, and I feel confident from my memory it was made available to the Secretary. Certainly to the Assistant Secretary for Near Eastern Affairs and the senior staff in the Department.

Chairman PIKE. Did any agency of the intelligence community—CIA, NSA, DIA, the Watch Committee, any of them—predict the outbreak of the war?

Mr. CLINE. Mr. Chairman, prediction is a difficult word.

Chairman PIKE. Did any of them say hostilities were imminent immediately prior to the hostilities?

Mr. CLINE. No one said they were imminent in the week prior to hostilities.

Chairman PIKE. On the contrary, did they not say, almost without exception, that hostilities were not imminent?

Mr. CLINE. A number of statements were made discussing the evidence and saying the conclusion was that they were not—

Chairman PIKE. And is it not true that even after the war broke out, the conclusion of one of those outfits was that the hostilities were going to be minor?

Mr. CLINE [continuing]. I have been informed some of my colleagues had the misfortune to deliver a memorandum after the event, which had the wrong conclusion; yes, sir.

Chairman PIKE. Mr. Stanton?

Mr. STANTON. Was there a change in procedure that occurred in the administration in 1969 in the method of reporting information from the source of intelligence gathering, to the intelligence community, and then on up to the President? Was there a change in the procedure that might have affected the ability of the intelligence community to make a judgment to assist the Secretary of State or the President in making a decision?

Mr. CLINE. Sir, I believe at some point in 1969 or shortly afterward—certainly before 1973—such a change in procedures had been instituted. That change involved prior clearance of intelligence reporting at the White House before dissemination in other areas of the Government, including other intelligence agencies.

Mr. STANTON. Were there any instances, Mr. Cline, where intelligence material was passed, once it was gathered by NSA, directly to the White House, or directly to the Secretary of State, without passing through channels so it could be assessed by the intelligence community?

Mr. CLINE. Yes, sir.

Mr. STANTON. And what is your judgment as to the impact of that change? Did it aid and assist in judgment-making, or did it detract from judgment-making?

Mr. CLINE. I believe that it made a very serious impact, adverse to the efficient workings of the intelligence community. Because the advantage of having a coordinated interagency analytical and reporting system is to be sure that all of the available intelligence can be looked at by the same group of people, weighing one piece of evidence against another and trying to reach the best possible judgment. Obviously, if a group so charged does not have all of the intelligence, or even if they are simply uncertain that they have all of the intelligence, their findings are handicapped.

Mr. STANTON. Wasn't this change in procedure instituted by the Secretary of State, Dr. Kissinger, in order to get information directly to him?

Mr. CLINE. Well, no. I believe, sir, this change was instituted earlier than September 1973, when Dr. Kissinger became Secretary of State. I think it stems from sometime toward the early part of the administration, and that the orders came from the White House, not from the State Department.

Mr. STANTON. Thank you.

Could you tell us the impact of what the intelligence community gathered, in a general way, in the Nixon-Kissinger Mao Tse-tung conversations in terms of establishing foreign policy in this country, and having an understanding of foreign policy?

Mr. CLINE. In 1971 and 1972?

Mr. STANTON. That is correct.

Mr. CLINE. Well, I can speak largely for myself. I didn't know anything about it. I saw nothing of those records. It is my impression that few, if any other, officials in the State Department were given access to the record of those discussions.

Mr. STANTON. Do you believe that there is a basis or a way for the American people to be able to support foreign policy in terms of its relationships with powers such as China?

Mr. CLINE. Sir, I am quite clear in my mind that certain discussions are sensitive to the success of the negotiations and should not be publicly revealed, but I believe that the substance of those discussions and the details of verbal agreements must be investigated by responsible officials who are expert in the subject matter, and their views should be heard and quite possibly be made public.

Mr. STANTON. Thank you.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. Cline, I really appreciate your presentation this morning. I have just a couple of questions which are general in nature.

At page 4 of your statement, if you will refer to that, sir, you state in your second recommendation that the professional corps of senior public servants should be brought into the process of policymaking and decisionmaking, "not only to contribute light and clarity to this process, but to enable them subsequently to explain" final policies to appropriate members of the news media, to Members of Congress and to the interested public.

Would you identify to what level you refer when you say "professional corps of senior public servants"? In other words, quantitatively how far down could we go in this?

Mr. CLINE. In considering what we are now considering, this rather important and high-level matter, sir, I should think the spread should not be very great. I certainly think officials of the level of an Assistant Secretary of State should be included and other agencies as well in the State Department, and I think that the expert—selected expert—members of the staffs of bureaus and assistant secretaries should also be informed in accordance with the principle of "need to know"—their being able to contribute something to the understanding of the problem.

If you force me as an intelligence officer to make an estimate of how many people I am talking about, I am talking about, on an important, sensitive subject, about 50 or 100 people.

Mr. TREEN. I think in response to Mr. Stanton's question you alluded to the fact or mentioned that you recognized that some secrecy may be important in negotiating agreements or treaties.

With respect to the negotiations leading up to the partial recognition of mainland China, there was a great deal of secrecy at that time. I was rather surprised we could keep the venture into China a secret as long as we did. It had some reassuring effect on me anyway. I am not sure I would have agreed to the policy, but assuming it was right to do what we did, do you recognize the importance of that information being limited to a very small number of persons?

Mr. CLINE. Mr. Treen, I believe it should have been limited to a small number of people but not so small as it was in fact limited, and I have rather specific reasons for suggesting that, at least some of which I would be happy to volunteer in open session—the main one being that I believe if some senior officials in the State Department had been aware of these negotiations in 1971, that they would have found some way to prevent the shock to Japan, our long-time ally which caused a great deal of diplomatic difficulty for us, when they were caught by surprise by the President's announcement in July 1971.

I also think, and as a matter of fact I remember writing at the time when I did find out about it, that we should immediately begin to concern ourselves with the diplomatic posture of India because it seemed to me India would be alarmed at our change and would be inclined to come closer to the Soviet Union as a result. And you may remember that in August or so, I believe in that year, a treaty was formed between India—approved between India and the Soviet

Union. In other words, I think there were more consequences of this act, assuming it was totally correct, as you phrased the question, which could have foreseen if a few more people had been worrying about our policy and its consequences and the situations in the world, rather than just preserving the secrecy.

Mr. TREEN. Again without suggesting whether I think the move was good or the policy right, you would agree, though, that informing the Japanese at the proper levels of what we were doing would hold forth some risk of disclosure?

Mr. CLINE. I think you will agree any time a second person is informed of a secret there is an additional risk.

Mr. TREEN. Particularly if it is a foreign nation, would you not say?

Chairman PIKE. The time of the gentleman has expired.

Mr. CLINE. My experience with the Japanese Government indicates at the top level they are very responsible. I believe the Prime Minister was Mr. Sato, whom I know personally, and I do not believe he would have exposed anything given him in confidence.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. With regard to the 1973 Middle East crisis, I would like to raise a few more general questions.

As I understand, you believe Mr. Kissinger's simultaneous occupation of the National Security Council chair as well as his role as Secretary of State hampers the flow of intelligence information. Is that an accurate assumption of your position?

Mr. CLINE. That is a fair paraphrase of what I said.

Mr. DELLUMS. Should there be an absolute prohibition of anyone holding both jobs in the future in this country?

Mr. CLINE. In my opinion there should be a prohibition of these two vital jobs being held by one person. This has nothing to do, of course, with the personal capabilities of Dr. Kissinger. It stems from the simple fact that the highest level of our national security and foreign policy decisions is the National Security Council, where in effect the Secretary of State and the Secretary of Defense argue out with the Assistant to the President for National Security Affairs positions which are designed to influence the President and let him make a final decision.

If two of those three key jobs are held by the same person, I fail to understand how what I would consider an adequate dialog can take place.

Mr. DELLUMS. Is this country at this present moment suffering from a form of personal diplomacy that holds close the information that comes from high-level discussions?

Mr. CLINE. It certainly is, and I would only like to qualify that agreement by saying that, as I agreed with other gentlemen on the committee, of course high-level negotiations deserve a certain amount of secrecy and a certain protection at critical times; but I believe in recent years and in fact preceding the Republican administration—I think in the Johnson years also—there was an increasing tendency to close off the details of such negotiations, even from those officials in the U.S. Government who could have helped insure that the negotiations were a success and that the agreements being discussed were careful and prudently worked out.

Mr. DELLUMS. Does the community regularly receive information from Presidential and Secretary of State high-level diplomatic discussions? If not, is this a Nixon-Kissinger phenomenon?

Mr. CLINE. Let me try to answer very carefully, Mr. Dellums.

The intelligence community does receive information about many negotiations. The higher the level of negotiation, the less they receive. The more important the negotiation is, therefore, the less they receive.

If the negotiation is conducted personally by the President or by his Assistant for Security Affairs, in the 1969-73 period which I have been speaking of, the output was almost zero from such negotiations. I believe that this condition was exaggerated under the Nixon-Kissinger system, although others could have been criticized in the past for similar procedures, but not nearly so comprehensive or systematic as in the Nixon era.

Mr. DELLUMS. Now, Mr. Cline, regarding the Mideast situation in 1973, in general did the 40 Committee take full measures such as ordering U-2 flights or taking other surveillance to be sure we closely monitored the situation that we obviously had some interest in?

The second part of the question is, what were the shortcomings of the 40 Committee's action?

Mr. CLINE. I am sure you and the chairman will appreciate answering the question in any detail might go into our methods of intelligence, which I certainly would not like to do except in executive session.

Chairman PIKE. I will simply say, Mr. Cline, this committee shares with you a desire not to harm the intelligence community on real sources and methods.

Mr. CLINE. Mr. Chairman, I appreciate that.

The reconnaissance program of the United States, including U-2 flights and similar flights, is approved normally by the 40 Committee of the National Security Council. I believe those kinds of flights are important enough in some cases that they should get very high-level attention because of the possible risks to our foreign policy.

I think that my conviction in the last 2 or 3 years of my service in the Government—that is, in the early seventies—is that the members of the 40 Committee and presumably the President—though I cannot speak about that from personal knowledge—did not give sufficient attention to the need for close reconnaissance of critical foreign policy situations, or dangers of hostility outside of the major possible adversaries like the Soviet Union and Communist China.

In other words, in the Mideast, which you are discussing, my recollection—and, of course, you should ask people to examine the record in detail—is that there were probably some gaps in our coverage of what was developing in that area at the various times of crisis in the Mideast, which should have been filled by a greater support for this reconnaissance effort in the State Department and in the White House.

Mr. DELLUMS. Thank you.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Cline, from your testimony today and from the questions that have already been asked you, and your answers to the same, I think the bottom line can safely be said to be that we really have got a one man show in Dr. Kissinger in our foreign policy and now it seems to be equally true in our intelligence-gathering activities.

You have trouble reaching the good doctor on the telephone in New York with vital information the day before an invasion in the Middle East is to take place. You are buffeted by some assistant and Kissinger doesn't get that information. We also have information that the Soviets informed Dr. Kissinger at the highest level concerning the October 6 war, that Mr. Sisco knew of this but the rest of our intelligence agencies were not privy to this conversation.

Then we have books being written about the good doctor by chosen news people who are privileged to ride with him and eat with him and be privy to all these conversations.

I think this is a pretty dangerous situation. We have one or two people concerned with the real vital intelligence of this country.

Now, we have seen three or four fumbles, to borrow from our great President Nixon who liked to refer to foreign policy questions in football terms. They fumbled the Middle East war and they fumbled the Cyprus crisis. They had intelligence there and they didn't make use of it. Additionally, they fumbled the negotiations with Turkey about opium-growing resumption. It seems to me that this whole intelligence community, with the billions of dollars we are spending on it, ends up with two or three people who make the final decisions and receive the most sensitive of all information. The rest of us are kept in the dark and are handed press releases that are self-serving.

How would you assess that comment?

Mr. CLINE. Mr. Murphy, I wouldn't want to edit your remarks. Perhaps you have stated it a little boldly.

Mr. MURPHY. I think we are talking about pretty bold possibilities and consequences, causes and effects.

Mr. CLINE. Sir, I think you are discussing a very important and serious situation. I think, to put it very simply, it is the constriction of the policymaking process, the political process by which this Government arrives at crucial decisions, to a very narrow sphere.

Mr. MURPHY. And probably at the narrowest point of that sphere and maybe not even connected thereto is the Congress which is charged with the responsibility of overseeing the purse strings of this country and, goodness knows, we are the last to find out what is going on.

Mr. CLINE. I certainly do not think that one man or two men or even a dozen men should make crucial decisions without being subjected to a process whereby it is insured that they are up to date and aware of the intelligence relating to the decision they are making—

Mr. MURPHY. Now we are being treated to the frosting. Because we are starting to ask some hard questions about our intelligence community and about these fumbles, it is said that we in the Congress are meddling in the internal affairs of others. But, from the track record here and the score card, I would think we are long overdue for meddling in some of Mr. Kissinger's activities and the country will be better off if the Congress wakes up and starts doing something about it.

Thank you, Mr. Chairman.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. The reports we have received seem to focus on the failure of analysts—the lower level people, especially the DIA people—and it seems possible that the whole problem is not the fault of the analysts, but maybe the problem is in a different structure.

I guess I want you to respond in terms of the process of reporting intelligence and the structure and how this works.

Isn't it true that a number of pieces of vital intelligence were not in the hands of the "Watch Committee" because in fact that intelligence had been compartmented and all the members of the Watch Committee weren't cleared to receive certain kinds of intelligence? Is that generally true at the time before this war?

Mr. CLINE. Yes, Mr. Kasten, that is generally true. I am not aware in detail of just which pieces of intelligence were available to every person in the process, but that was the general situation. What the intelligence people called "compartmentation," the separation of availability of information to compartments of the Government, is always important, but it was exaggerated and the movement of intelligence back and forth between these compartments, and even to a large number of people in them when they needed to know—it became very constricted in the period we are discussing.

Mr. KASTEN. That problem of compartation—isn't that a classification problem that really should be dealt with at the very highest levels and not a problem that would be the responsibility of the working level analysts?

Mr. CLINE. I think that is right, sir, and let me qualify or suggest a change in the way you put that proposition. It is not purely a matter of classification; it is a matter of policy and attitude towards the distribution of information to responsible officials.

If the assumption is, as I was trained over 30 years, that in intelligence, like other information, the information should be made available to people who have a need to know it—in other words, who can use it to the advantage of the Government—then you tend to make a positive effort to get it to where it needs to be used.

When the attitude at the top level of the Government changes—let it be sure no information gets to anybody unless we are sure we want them to have it—then I think we have turned the process on end. While I have put that in a very exaggerated way, I think the attitude tended to become more like the latter proposition in the 1972-73 period.

Mr. KASTEN. During this same period of time there were a number of high-level diplomatic interchanges that were not available to the Watch Committee. Is it true that this failure was as important as the failure of any work done by the analysts—in other words, in your opinion is the diplomatic material just as important as the material that would come from the intelligence sources, or would you give it a different weight?

Mr. CLINE. I give it a very important weight. A diplomatic discourse, while often veiled and hard to interpret, is the bread and butter business of international relations and I think any intelligence officer feels he must be aware of what all important officials are saying to each other before he tries to analyze it in the light of such additional technical intelligence as he has. I don't want to say one is more important than another. You have to have both.

Mr. KASTEN. The policy and attitude that has been established by, you said, the people at the very top levels, specifically those establishing this policy and attitude in the Government? The President? The Secretary of State? Who specifically is establishing this policy and attitude?

Mr. CLINE. I believe in the period that I am speaking of, which is, as I say, 1971, 1972, and 1973, that policy was clearly being pressed upon the rest of the Government by the spokesmen for the President in the White House, and the White House official who normally passes on the President's wishes to the intelligence community is the Assistant to the President for National Security Affairs. Hence the evidence that that was the White House attitude came from that office.

Mr. KASTEN. Evidently as a result of some of the failures there were some people who were replaced or changed.

General Smith, is it true the only people fired or reassigned as a result of our failure in this particular intelligence effort were three working level DIA analysts? Or were there other people who were changed in assignment?

General SMITH. Mr. Kasten, if I may give you just a little background on that, I would like to explain exactly what did happen.

The 6th of October the war began, and on approximately the 25th or 26th of October I decided that I needed to change some members of my team. These three people were not fired. They remained in DIA.

Two of them remained within my DIA organization. However, I felt I could bring in some people from other parts of the organization—people who had been fighting a real live war in Southeast Asia, had known the importance of photography, communications intelligence and such—to help bring a little more familiarity with a hot war into the Middle East situation. So I moved these three people out and I brought other people in.

I might say that what has been said so far is that none of my analysts during this 6 months prior to the 6th of October were able to say with certainty that a war, a large-scale war, was going to break out. They constantly said, "There are movements of troops; there are movements of armored forces; there are movements of aircraft and radars."

However, they had been seeing this going on for 7 years, since the 1967 war, and they had seen the same pattern repeated over and over by the forces, by Mr. Sadat and by the President of the Syrian Republic, and by the Israelis; and they slowly became attuned to these repeating cycles of shows of force and training exercises. So the fact is, the information concerning the placement of the forces had been sent out to all the people in the field, everyone in the intelligence organization, in the operations organization, knew where these forces were.

However, my analysts felt because of the failure of the Egyptians to decisively beat the Israelis in 1967, they would continue not to be able to win a war should they start it in 1973.

We actually made the judgment that if a war were to occur, the Israelis would win. The fact is, a warning of an impending attack frequently is knowledge of what the intentions of the enemy were. My analysts in DIA, just as the analysts in other organizations, were not able to decide what the real intentions were because they had

seen these movements over and over before and they felt, because of the 1967 operations, the Egyptians and Syrians would not do more than a hit-and-run attack or a small type operation such as that.

Now, this is not a monolithic organization or monolithic distribution of information. In the European Command, where I am now stationed, in April of 1973, the Director of Intelligence in Europe said in a message to me that he felt some type of conflict would break out in the Middle East between the Egyptians, Syrians and Israelis in the next 6 months. As a matter of fact, he was able to perhaps place his forces on a somewhat higher state of warning than we had done in the United States at that time. But no one was really able to say there was going to be an outbreak of large scale war on the 6th of October.

When I moved these people, I did not fire them for failure to correctly assess the information.

Mr. KASTEN. You didn't fire them at all; you just reassigned them?

General SMITH. I moved them, yes.

Mr. KASTEN. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Mr. Cline, I would like to congratulate you for the first portion of your statement and your recommendations to this committee concerning the thrust of our effort.

Like you, I hope the committee will place its main emphasis toward examining the present weaknesses in our intelligence system and in trying to eliminate those problems rather than dwelling on past mistakes.

Having been a professional weather forecaster for some 20 years, I can assure you there is a vast difference between forecasting and hindcasting. Weather forecasting to my mind is not unlike effective intelligence work. Both require careful gathering of reliable data, a systematic analysis of that data, and finally the drafting of a forecast, or a conclusion. If we are to improve either the science of meteorology or our intelligence effectiveness, we must constantly seek to improve the system of data-gathering, analysis and conclusions.

Even the most rank amateur weather forecaster can do hindcasting with 100 percent accuracy but the best professional meteorologist can only make it about 87 percent of the time.

So, like you, I hope we will direct our efforts primarily toward our present system and ways of trying to improve it rather than dwelling on our mistakes in the past.

Thank you for your statement.

Mr. CLINE. Thank you, Mr. Milford.

Mr. Chairman, I was sure somewhere in this country there was someone who would understand the difficulties of being an intelligence officer. I hadn't thought about the weather forecasters.

Chairman PIKE. If the gentleman from Texas would just yield so I could respond to your comment, I would simply say, if we approach 87 percent, we would all be delighted.

Mr. MILFORD. I have no further questions, Mr. Chairman.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Cline, do you feel there might be some element of mistrust on the part of the Secretary of State, of the vast operations in intelligence, and that may be one of the reasons for the very closely held informa-

tion that you describe, both in your article and in your testimony today?

Mr. CLINE. Sir, I don't think I could say what goes on in Dr. Kissinger's mind. That is a mystery. Although I have known him and been a friend of his for a long time, I can't claim to penetrate.

However, I would say in the period we are discussing, the President and Dr. Kissinger were both very much concerned about what they considered unfortunate leakage of information out of the Government to the press and that they made every effort to try to prevent this.

I suspect this had relatively little to do with the intelligence community, and in due time we found out it had more to do with the whole Watergate problem; but they were distrustful of the leakage of information.

I would like to answer your question that way rather than speak to any particular group of people.

Mr. HAYES. In the light of certain intelligence collapses from 1959 on—the most notorious being the U-2, the Bay of Pigs, and Tet—the subject we are talking about today—the Arab-Israeli conflicts in general, and the intelligence failures involved there, do you think from those very obvious things and from all the other subsidiary failures that you discussed with staff, for example, that you have come across in your experience, that there might very possibly be a very broad scale leak within our intelligence community?

Mr. CLINE. Every experienced intelligence officer will refuse to say he is sure there is not a high-level penetration of our system. All I can say is, in 30 years' experience of having people look, they have never found one. Until Mr. Agee wrote a book about CIA, there was not even an intelligence officer who could be called a defector.

Mr. HAYES. Do you know what a mole is?

Mr. CLINE. I do know what a mole is. I can see you are a spy fiction fan.

Mr. HAYES. How about Philby? Wasn't he one of the top three or four people well known to the British public and to the intelligence community?

Mr. CLINE. That is correct.

Mr. HAYES. What is the possibility here?

Mr. CLINE. I think the possibility is rather limited or at least I think it was rather limited in my period in intelligence because of the high morale and the high sense of public service that I observed almost uniformly in our intelligence services in the fifties and sixties.

I am not so confident about the future simply because of the lambasting which intelligence agencies have had in the public, which tends to make people a little down in the mouth.

Mr. HAYES. Their morale stayed up in spite of the enormity of the failures?

Mr. CLINE. Yes, sir. I was hoping I would get an opportunity to say that you reeled off a rather interesting catalog of failures. You didn't mention any successes.

Mr. HAYES. Of course there were some. I understand that.

Mr. CLINE. I think the morale is sustained by the fact that you are doing a hard job pretty well.

Mr. HAYES. To use your medical example, it is sort of like examining a man with brain cancer and telling him, "Your brain is in bad shape, but I want to tell you your feet are in good condition."

Mr. CLINE. It will probably help answer your question if I say that, as you know, we can't talk about most of our successes because they will then become failures, but the one that we all talk about constantly, probably boringly, is the early detection of the Soviet missiles in Cuba in 1962.

I had the honor and privilege of taking that first report to the White House and my photographic interpretation people were the real heroes of that episode.

That was a success which in my view paid a million times over for the intelligence community.

Mr. HAYES. This is perhaps the place to mention this: You have frankly taken the responsibility for not having overridden the personnel surrounding the Secretary of State in 1973, but why do you think you didn't go ahead and act on your own instincts and override those members of the entourage?

Mr. CLINE. Well, self-analysis is probably the hardest thing to do.

Chairman PIKE. The time of the gentleman has expired.

Mr. CLINE. I have in the past done exactly what you describe. I remember calling Dr. Kissinger in California in 1970 to tell him that the Russians were cheating on the cease fire agreement in the Sinai Desert then. I guess I did not do it because of the increasing constriction of the control of information and policymaking in 1973 and, frankly, my dismay at the probable results—in terms of the structure of government and his appointment as Secretary of State while retaining the position of Assistant to the President in the National Security Council.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Cline, I offer these questions not in the spirit of criticism, but in recognition that we have to get as much information on the record as we can, to make it available to other Members of Congress, to try to determine what should be done with respect to this information.

I would like to direct your attention to the breakdown of the evaluation prior to the war and what sometimes we call the prior exercises excuse, which was alluded to by General Smith.

We can't go into some, but there were significant differences in indicators and I would like to bring those out for the record through your testimony if you don't mind.

There were alert mechanisms of which we were aware which were indicative of the coming war, is that correct?

Mr. CLINE. There were some evidences in the last few days which to me seemed to be pretty good indications that war was very likely.

Mr. JOHNSON. I am talking about an alert mechanism which the Egyptians had used as early as September 26. Are you aware of that?

Mr. CLINE. Sir, I really prefer not to specify the sources from which I drew that conclusion.

Mr. JOHNSON. I will try to stay away from sources and methods.

There is no secret about the fact we were aware of additional military units close to the front on both sides, is that correct?

Mr. CLINE. That is common knowledge.

Mr. JOHNSON. It is common knowledge that we were aware of a call-up of the military personnel by the Egyptians, which was unprecedented and described as unprecedented. Is that correct?

Mr. CLINE. I think that was in the press, yes, sir.

Mr. JOHNSON. There were also cancellations of leaves which were unprecedented on both sides. Isn't that correct?

Mr. CLINE. I am not sure they were unprecedented, but they were noted as being on a large scale.

Mr. JOHNSON. More than a week prior to the actual war there was a very tight communications security system inaugurated by the Egyptians which was unprecedented.

Mr. CLINE. There were changes in procedure; yes, sir.

Mr. JOHNSON. There was a major evacuation of Soviet personnel from Egypt and Syria, I think starting on October 3.

Mr. CLINE. That is right.

It seems to have been partly the 3d and partly the 4th. We were all aware, certainly by the morning of the 5th, that something major had changed in the evacuation plans for dependents in both of those countries.

Mr. JOHNSON. Would it not also be fair to say that, short of having privy information as to the intentions of the Egyptians and the Syrians, that we were pretty well convinced in our own minds there would not be an attack and therefore we disregarded all this accumulation of evidence?

Mr. CLINE. Sir, I am having some difficulty in answering a few of the questions that have been raised here because I do not entirely agree with the post mortem evaluation which my friend, Mr. Parmenter, has presented. It was drafted after I left the Government, although it was on material with which I was very familiar. I personally think it exaggerates the failure of the analysts. Analysts are never certain, as several gentlemen have said, what to conclude. I believe if they present evidence for the attack and the evidence against attack accurately, they call attention of senior officers to the fact that some serious problem exists with regard to interpreting this evidence and they do not exclude any interpretation, they are doing a pretty useful job.

Mr. JOHNSON. They point out their capability exists and that is probably the end of what they can do.

Mr. CLINE. Unless something is totally conclusive, you must make an inconclusive report.

Until the last day or two—as I told you, I expected an attack since the preceding May, but I didn't know when. You almost never know when something is going to happen. You wait until the evidence comes in and by the time you are sure it is always very close to the event. So I don't think the analysts did such a lousy job. What I think was the lousy job was in bosses not insisting on a new preparation at the end of that week.

In previous times the National Intelligence Estimate which has been written in May and which was a good estimate for the time, was out of date and in previous times we would have prepared a special National Intelligence Estimate on the specific question, what does this new evidence mean.

There was no request for such a paper and no effort to write one. I now think I probably should have dug my heels in and said, "Let's use our machinery; let's get it together. I don't care who is in New York and who is in Washington. The intelligence community should address itself to this problem."

That was not done. What this post mortem is doing is digging out the miscellaneous reporting of everybody's files and saying it didn't add up to much.

Well, miscellaneous reporting never adds up to much. There were good forecasts in there, but there were bad ones. The truth is—and this is that point I tried to make earlier this morning—the system wasn't working very well and the reason the system wasn't working very well is that people were not asking it to work and not listening when it did work.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

Dr. Cline, do you think our intelligence is less objective than you would like it to be because of the intelligence community's close ties to our diplomatic department, its involvement with the diplomatic process, and the use of many ex-State Department people in its ranks? Do you think because of this, perhaps our intelligence analyses are too supportive of, and biased toward our diplomatic processes?

Mr. CLINE. I must remind you I can not speak about today, I can only speak about a period some 18 months ago. At that time I think the answer was definitively no, that the process, the analytical process was not being destroyed because it was infiltrated by diplomats or being pressed by diplomats.

I think the analytical process, as I have just said, wasn't bad. I think the people in it were very good. What I am concerned about was that process being mobilized to address itself objectively to the key questions.

Mr. LEHMAN. Perhaps what I should have said is, a process being mobilized to address itself to the key question.

Mr. CLINE. I would say the process was not properly so mobilized.

Mr. LEHMAN. Then it was not as objective as you would have liked to have seen it be?

Mr. CLINE. Consequently, the objective interpretation was not made available. Mostly, it simply wasn't written.

Mr. LEHMAN. Along the same lines, do you think perhaps that the close connection of our intelligence community to the various military branches tends to bias our intelligence estimates in favor of American equipment versus enemy equipment and any new equipment, or perhaps even overrates the potential American military effectiveness?

Mr. CLINE. I don't think that is true. I think the strength of our intelligence community system when it worked at its best was the same strength that the effect exists in our whole system of government.

There were checks and balances to bring out the truth and suppress the bias.

It is natural our military intelligence agencies would concentrate on military problems and in some cases perhaps exaggerate the importance of them. In the same way the State Department is apt to exaggerate the importance of diplomatic things.

Mr. LEHMAN. I am talking about the effectiveness of the American military equipment versus other military equipment.

Mr. CLINE. I thought you were talking about the intelligence problem.

I think intelligence was provided which made it possible for our military equipment and military program to be reasonably responsive and accurately reflective of the needs at the time.

Mr. LEHMAN. I am asking one question and the answer is coming back in another way.

Mr. CLINE. Could you restate your question?

Mr. LEHMAN. Do you think if the Israelis had been told there was a 90 percent chance of hostilities that they would have mobilized?

Mr. CLINE. Yes, I do. In fact, I think if we had not been very busily dissuading them from mobilizing they would have mobilized.

Mr. LEHMAN. If they had mobilized, do you think the Arabs, Egyptians, and Syrians had an alternative plan not to cross the canal in this event? Is there any way you could assume any such thing, as the Japanese had an alternate plan before Pearl Harbor if their cover was blown?

Mr. CLINE. I rather doubt it. I think they probably would have attacked anyway—the Arabs—but I believe they would have had much less success than they did, had the Israelis not been so intent on persuading us they were not starting the war.

Mr. LEHMAN. In other words, what you are saying is, even if you knew about it you couldn't have stopped the war but you could have had a less catastrophic situation there?

Mr. CLINE. I believe that is correct, sir.

Mr. LEHMAN. You made a statement that you think we have the best intelligence system in the world. I don't argue with that, but that is a positive statement. Why do you say that?

Mr. CLINE. I say that because I think that we organized a system which did bring a very high quality of people, not only from our Federal bureaucracy, from the State Department and the Defense Department, but from our universities, from our research institutions in the public domain; and because of their concern about international danger, we put them to work, putting their wisdom together, bringing together the best knowledge and wits in the country to deal with what in those years we all considered a very grave danger and one which required a sacrifice of any independent, personal ambitions we had to public service. I believe that is the kind of intelligence service we had.

I do not believe the KGB has that kind of service and it is the only really massive intelligence system in the world except ours.

Mr. LEHMAN. They knew and we didn't.

Chairman PIKE. The time of the gentleman has expired.

Mr. Field.

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Cline, we have heard this morning how a number of pieces of intelligence that were very important did not get to the Watch Committee which, as I understand it, is a subcommittee of the U.S. Intelligence Board. In fact, the Watch Committee has the responsibility for alerting our Government of any major crises, such as a war. Specifically, we have heard today how some NSA intelligence—which could potentially have been some of the most informative

intelligence on the outbreak of war—was not given to the Watch Committee because of technical problems in transmitting it quickly enough to the Watch Committee.

We have heard how some CIA information was not given to the Watch Committee because of classification problems.

You have mentioned that perhaps Dr. Kissinger had information which was withheld because he believes very strongly in secrecy and heavy classification.

We have heard how some lower-level analysts thought there might be war, but their superiors didn't back them up when the issue went to the Watch Committee.

My question to you is, if this information had been able to get through to the Watch Committee, would the Watch Committee, in your opinion, have been able to predict the war?

Mr. CLINE. This is a hard one, Mr. Field, to answer. It, of course, depends on the date. I think if the Watch Committee met on Thursday or Friday, as I think they actually intended to do, they might have reached the same conclusion I did.

Mr. FIELD. It wasn't a lack of information, but rather the process did not do what it should do, which is to be able to alert people to these situations?

Mr. CLINE. The process certainly prevented the reaching of that conclusion.

Mr. FIELD. At the upper levels.

Mr. CLINE. That is right. I cannot predict what the Watch Committee would have done had they had additional pieces. I am not sure exactly what they did have.

Mr. FIELD. I would like to put this in perspective. In other words, there was a failure. I would now like your opinion, from your experience in the State Department. It is my understanding, from the post mortems, that the main reason war broke out was because President Sadat felt that war might be necessary to break the diplomatic stalemate. So therefore if we had been able to predict this war, could we have perhaps encouraged Israel, our ally, to have made some diplomatic move which might have prevented war?

Mr. CLINE. We certainly could have taken that step to encourage them. What the outcome would be of course depended on the step and the circumstances. I think it would be useful—I am trying to answer the spirit of your question—for our senior officials to be aware of the danger and to take diplomatic measures to try to defuse it.

Mr. FIELD. The cost of this intelligence failure is therefore the cost of the war. Now, again, this is not an academic interest we have in predicting these things, because the cost of the American people—wouldn't it be fair to say—is the cost of rearming Israel during and after the war?

Mr. CLINE. I think that is probably true, and I think it brings out the point I was trying to make in answer to a previous question. Intelligence, if it is well done and deals with important situations, is invaluable and there is no substitute for it at any price.

Mr. FIELD. Would it be your understanding, also, that the Arab oil boycott was a result of the hostilities, which could have been avoided had we been able to alert our officials?

Mr. CLINE. That is my opinion.

Mr. FIELD. I have figures here that the Arab oil boycott cost us directly in this country some \$20 billion. That was the immediate impact. We are still paying for it every time we drive up to a gas pump and pay 65 cents a gallon or 70 cents a gallon for gasoline.

We have experienced untold lost man-hours from people in gas lines. We had children waiting for schoolbuses in the morning darkness. These are the costs of the intelligence community's failure. Is that correct?

Mr. CLINE. I think that is a fair deduction. If we could have taken successful diplomatic action to prevent the war it would have brought untold benefits to us, even in terms of dollars and cents, as you put it.

Chairman PIKE. I would like to tell the members of the committee, it is the Chair's hope that the committee will now vote to go into executive session. It is the Chair's intention, when and if we go into executive session, to ask for a further vote on releasing the text of those items as to which I had a discussion with Mr. Rogovin earlier, and I mean releasing them today—but not before we vote on it, obviously.

We will be pleased to hear Mr. Rogovin on the subject.

Mr. Treen.

Mr. TREEN. Mr. Chairman, I move that the committee go into executive session.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. PIKE.

Chairman PIKE. Aye.

By a vote of 6 to 1, the committee goes into executive session.

We will meet at 1:30 this afternoon.

[Whereupon the committee adjourned to 1:30 p.m. of the same day, to reconvene in executive session.]

WITHHOLDING OF CLASSIFIED INFORMATION BY THE PRESIDENT

FRIDAY, SEPTEMBER 12, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:20 a.m., in room 2128, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Murphy, Hayes, and Johnson.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and John L. Boos, counsel.

Chairman PIKE. The committee will come to order.

The House Select Committee on Intelligence issued a subpoena for certain documents, very frankly, at this time I am not sure of the degree to which we find that the agencies are in compliance because I find that the names of the documents change from time to time and apparently between the date of the Arab-Israeli war and the date of the Cyprus situation the names of some of the documents had changed.

Is Mr. Lord of the National Security Agency here? Mr. Lord, I would simply like to ask you whether there was no summary put out by your agency on the dates July 19, 1974, and July 20, 1974.

Mr. Lord. As far as I know there should have been, unless that was on a weekend.

Chairman PIKE. No, the 19th was a Friday. The 20th was a Saturday, but the 21st was a Sunday and I notice there was a document on Sunday the 21st. But I find none for either Friday, the 19th, or Saturday, the 20th.

Mr. Lord. There would be none for Saturday, there should be one for Friday.

Chairman PIKE. In view of the fact that that is the day before the invasion, that obviously would be a highly significant document for us. We do not have it in our possession. It is not covered by the letter of transmittal from the general. I would ask you please to find that document for us.

Our witness today will be Mr. William Hyland, who will summarize this situation briefly and then we will question all of the witnesses. You may proceed, Mr. Hyland.

STATEMENT OF WILLIAM G. HYLAND, DIRECTOR OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE

Mr. HYLAND. Thank you, Mr. Chairman. Before proceeding I would like to introduce Mr. Rex Lee, an Assistant Attorney General from the Justice Department, who would like to make a statement on behalf of the witnesses from the executive branch.

Chairman PIKE. On behalf of all the witnesses from the executive branch?

Mr. HYLAND. Yes, sir.

Chairman PIKE. Mr. Lee, I'm very interested in your presence. I was told at 10 o'clock that you would be here and would wish to make a statement. Who asked you to come?

Mr. LEE. I am appearing here this morning on behalf of the executive branch.

Chairman PIKE. Who asked you to come?

Mr. LEE. The Counsel for the President.

Chairman PIKE. Who is the Counsel for the President?

Mr. LEE. Mr. Buchen.

Chairman PIKE. Mr. Buchen asked you to come. When did Mr. Buchen ask you to come?

Mr. LEE. I would say yesterday afternoon about 6 o'clock.

Chairman PIKE. Did the President ask you to come?

Mr. LEE. It is my understanding that through Mr. Buchen——

Chairman PIKE. Did the President ask you to come?

Mr. LEE. Not personally, sir.

Chairman PIKE. Did anyone of higher authority than Mr. Buchen ask you to come?

Mr. LEE. Mr. Buchen informed me that he was acting on behalf of the President.

Chairman PIKE. Did he show you any written documentation of that?

Mr. LEE. No, sir.

Chairman PIKE. So Mr. Buchen has been named, as I understand it, by the White House to act as their counsel in all matters involving intelligence.

Mr. LEE. It is my understanding that he is Counsel to the President.

Chairman PIKE. Is that his title? You were with the Attorney General's Office.

Mr. LEE. I am an Assistant Attorney General; yes, sir.

Chairman PIKE. Did the Attorney General ask you to come?

Mr. LEE. Yes, sir; he did.

Chairman PIKE. Did he ask you to come at his instigation or because you went to him and said you had been requested to come?

Mr. LEE. There was a request that came to the Attorney General from Mr. Buchen at the White House.

Chairman PIKE. Mr. Buchen phoned the Attorney General; is that correct?

Mr. LEE. That is my understanding; yes, sir.

Chairman PIKE. All right, you may make your statement, Mr. Lee.

STATEMENT OF REX E. LEE, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, JUSTICE DEPARTMENT

Mr. LEE. Thank you, Mr. Chairman. My name is Rex E. Lee. I am an Assistant Attorney General, and I appear this morning on behalf of the executive branch. We understand that this committee yesterday, acting in executive session and over the protests of representatives of the Department of State, the Department of Defense, and the Central Intelligence Agency, voted to declassify and release to the public and it did in fact subsequently make available to the

public materials properly classified under law. These materials had been provided to the committee as classified documents pursuant to its requests. The materials released by the select committee concerned—

Chairman PIKE. Mr. Lee, before you go on further, did you write this statement?

Mr. LEE. In substantial part; yes, sir.

Chairman PIKE. Where did you get your information, Mr. Lee? You were not here yesterday. You don't know what happened yesterday.

Mr. LEE. That is correct.

Chairman PIKE. How could you write the statement?

Mr. LEE. I obtained my information from other people.

Chairman PIKE. We were in executive session, Mr. Lee. Who told you what happened in our executive session?

Mr. LEE. Among others, Mr. Mitchell Rogovin.

Chairman PIKE. Mr. Rogovin, under what authority do you release information obtained in our executive sessions?

TESTIMONY OF MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. Rogovin. Mr. Chairman, I am counsel to the Director of Central Intelligence. He is my client. I advised my client at the conclusion of yesterday's executive session of the vote of the committee and what I considered to be the impact of the committee's decision. He was aware during the day because as you know we were in communication with him with respect to specific items that were asked of us.

Chairman PIKE. So you deem it all right for the executive branch to make public that which happens in the legislative branch of Government, but you deem it wrong for the legislative branch to make anything public; is that it?

Mr. Rogovin. I have never been under any restriction that I was aware of as an attorney in representing my client that would preclude me from discussing the events of an executive session with a client.

Chairman PIKE. It seems to me, Mr. Rogovin, that you are violating our Rules, the rules of the House of Representatives. We will continue to hear Mr. Lee, but I would like to make it very clear that this security is not a one-way street. The whole concept that the executive branch can say anything that the Congress does in executive session is wholly alien to me.

Mr. MURPHY. Mr. Chairman.

Chairman PIKE. Mr. Murphy?

Mr. MURPHY. I would like to get on the record a chronological history of what Mr. Rogovin said after the executive session and to whom he said it.

The CIA is your client, Mr. Rogovin. That does not necessarily make the Counsel to the President your client. I would like to find out from the Assistant Attorney General exactly who told him to come here today, exactly who prepared that statement, who was in the room at the time and who typed it, because it deals with what transpired here in executive session. The executive branch is not going to have this thing both ways with the legislative branch of the Govern-

ment. You come in here and bug our rooms, you throw us out for 45 minutes and yet you feel free to go out and tell anybody and everybody you want whatever you choose. You were not here yesterday.

Mr. Chairman, I resent it. I want a chronological history of everything that took place. And I want to find out whom Mr. Rogovin talked to.

Chairman PIKE. All right, I think that is fair, before we go any further. Let's just have you describe, Mr. Rogovin, the chronological order of what took place after you left our executive session; an executive session of the House of Representatives yesterday.

Mr. ROGOVIN. I will be happy to, Mr. Chairman. I will describe for you the various people I spoke with, but I will not describe the advice I gave to my client.

Chairman PIKE. On the assumption that the client-counsel relation is privileged, is that it?

Mr. ROGOVIN. That is correct. At the conclusion of the session yesterday—

Mr. MURPHY. You will tell us, though, if you talked to anybody other than your client, right?

Mr. ROGOVIN. I will tell you who I spoke with but not necessarily the nature of the conversation.

Chairman PIKE. The privilege doesn't extend to anybody other than the CIA.

Mr. ROGOVIN. I appreciate that. I believe at 4:15 we were still in session. At approximately 4:30 the executive session concluded. I then stood outside and listened to your press conference regarding the events of the executive session.

Chairman PIKE. Did you find any misrepresentation of fact in my press conference?

Mr. ROGOVIN. I am not aware of any.

Chairman PIKE. Thank you.

Mr. ROGOVIN. Let me roll back a moment. Before stepping out I believe I did speak with Mr. Colby.

Chairman PIKE. Before stepping out of here?

Mr. ROGOVIN. During the session. If you will recall there were a number of requests that you made for making certain materials public. I called Mr. Colby and we discussed on a secure line in the anteroom off the hearing room, your requests. I advised him of what was going on—that the committee was involved in the declassification of documents by vote, that the declassification was going on with proxy votes being exercised—

Chairman PIKE. Would the proxy votes have made any difference in the outcome, Mr. Rogovin? Let's be honest.

Mr. ROGOVIN. I am not aware if I am allowed to divulge the vote in public session.

Chairman PIKE. You told Mr. Colby that proxy votes were being exercised. Did you tell him they would not have made any difference?

Mr. ROGOVIN. I told him what the vote was so he could figure that out. The reason I highlighted the proxy vote was because I considered use of proxies an impossible way to go about declassification.

Mr. HAYES. Mr. Chairman, I am going to object to the continuation in public session of the disclosure of closed sessions. I am not

ready to waive what I voted for yesterday—that is going into executive session—at least not at this stage.

Chairman PIKE. I frankly don't feel that way. I think you are on the wrong track, Mr. Hayes. Once again I think the public has the right to know that the executive branch freely discusses within itself what happens in congressional executive sessions and finds not the slightest problem with security there; but it gets outraged if in their presence Congress acts to declassify anything.

Go ahead, Mr. Rogovin.

Mr. ROGOVIN. I advised Mr. Colby of the events of the executive session and indicated to him that I thought this was a matter that ought to be discussed, not only with Mr. Colby, but with Counsel to the President. It was arranged that I would go up to see Mr. Buchen after the executive session.

Chairman PIKE. About what time?

Mr. ROGOVIN. Probably about 5:15.

Chairman PIKE. In other words, you went right from here to the White House?

Mr. ROGOVIN. That is correct. With me were Mr. Andrews, Counsel for DOD, and Mr. Parmenter, who had been a witness during the day from the CIA.

Chairman PIKE. Was Mr. Andrews present at our executive session?

Mr. ROGOVIN. Yes, he was and he is here today. Mr. Hyland was with us but I don't believe he stayed for the meeting. Mr. Wilderotter, from Mr. Buchen's staff was present, Gen. Brent Scowcroft was present. Colonel McFarlane was present. Tom Lattimer from the Department of Defense was present and Seymour Bolten from the CIA was present. There then ensued a conversation regarding the declassification of the documents.

Chairman PIKE. So at this time you told these other people who were not your clients what had happened in the executive session of the committee?

Mr. ROGOVIN. Mr. Chairman, my client is the Director of Central Intelligence. He advised me to speak with the Counsel to the President and those who make up the community.

Chairman PIKE. This is perhaps a very small matter, but is your client the Director of Central Intelligence or is your client the Central Intelligence Agency?

Mr. ROGOVIN. The Director of Central Intelligence, Mr. Chairman. I took his request to mean that I was to discuss the matter of yesterday's declassification of the classified material with those within the community who were involved in questions of classification and those who were involved with requests by this committee to turn over the materials.

Chairman PIKE. Proceed.

Mr. ROGOVIN. That meeting lasted until probably 6:15 or 6:30. At that time Mr. Buchen in my presence made a phone call to the Assistant Attorney General in charge of the Civil Division, Rex Lee, and it was agreed there would be a further meeting this morning at 8:30.

Chairman PIKE. So the phone call was directed to Mr. Lee, not to Mr. Lee's superior, the Attorney General.

Mr. ROGOVIN. That is the only phone call I was aware had been made.

Chairman PIKE. Mr. Lee, doesn't that conflict with what you told me?

Mr. LEE. No, sir; Mr. Buchen also made a phone call to Mr. Levi.

Chairman PIKE. Was that phone call made subsequent to the phone call to you?

Mr. LEE. It may have been.

Chairman PIKE. So you were put on the job directly by the White House before the Attorney General was notified, is that it?

Mr. LEE. I had a contact that I think may have been prior to the time the Attorney General was notified.

Chairman PIKE. All right, go ahead. You may proceed, Mr. Rogovin.

Mr. ROGOVIN. I then proceeded to Central Intelligence Headquarters and further discussed the matter with Mr. Colby. I believe I left my office at 8 o'clock or 8:30 last evening.

Chairman PIKE. Where did you go when you left your office?

Mr. ROGOVIN. Mr. Chairman, I went to my home.

Chairman PIKE. You did not, in other words, have any further communication with Mr. Lee?

Mr. ROGOVIN. Not until about 8:20 this morning.

Chairman PIKE. Then what happened at 8:20 this morning?

Mr. ROGOVIN. At 8:20 this morning Mr. Lee and I discussed the subject matter of his statement.

Chairman PIKE. What do you mean you discussed the subject matter. Had it been written or hadn't it?

Mr. ROGOVIN. There was a draft.

Chairman PIKE. Prepared by whom?

Mr. ROGOVIN. I do not know, Mr. Chairman. I assumed it was by Mr. Lee.

Chairman PIKE. All right; is that satisfactory for your purposes, Mr. Murphy?

Mr. MURPHY. We don't know who Mr. Lee talked to. We have established who Mr. Rogovin talked to.

Chairman PIKE. How did you prepare the draft, Mr. Lee, if you only talked to Mr. Rogovin?

Mr. LEE. Mr. Jim Wilderotter came to my office last evening.

Chairman PIKE. Who is he?

Mr. LEE. A member of Mr. Buchen's staff.

Chairman PIKE. Did he give you the facts?

Mr. LEE. He gave me what he told me was his understanding of the facts.

Chairman PIKE. He gave you some hearsay which he had obtained in what capacity? How did he get the facts?

Mr. LEE. I was not told at the time, Mr. Chairman.

Chairman PIKE. You don't know how this hearsay got to him. Did you ask him where he got the facts that you put in your statement?

Mr. LEE. I am not sure, Mr. Chairman.

Chairman PIKE. How can you present to this committee a statement, the facts for which you don't even know the source?

Mr. LEE. Because at the time the original draft of the statement was prepared, I knew that this morning I would be meeting with people who were present at the meeting.

Chairman PIKE. So somebody unknown provides you with facts as to which he may or may not have a right to have and you accept them and prepare a draft on the assumption that someone who may have a right to have them later will go over the draft, is that it?

Mr. LEE. I knew we would be talking to Mr. Rogovin this morning.

Chairman PIKE. That had already been set up last night. How did you know you would be talking to Mr. Rogovin this morning?

Mr. LEE. Because Mr. Wilderotter told me.

Chairman PIKE. Who is he again?

Mr. LEE. He is on Mr. Buchen's staff.

Chairman PIKE. He doesn't represent the CIA?

Mr. LEE. I am not aware who he represents, Mr. Chairman.

Mr. MURPHY. How about your conversation with Mr. Rogovin this morning?

It is your statement that you prepared something with somebody from Mr. Rogovin's staff. Does that gibe with what he told you this morning?

Mr. LEE. I believe it does, Mr. Murphy.

Mr. MURPHY. What do you mean you believe it does? Would you come here and make a statement before this committee and not know whether or not that statement was in compliance substantially with what was said here yesterday in executive session and what was asked for or subpoenaed?

Mr. LEE. To the best of my knowledge there were not any factual changes in the substance of what was drafted last evening.

Mr. MURPHY. Then the fellow you talked with had pretty good information and he was not here yesterday, was he?

Mr. LEE. As far as I know he was not here yesterday.

Chairman PIKE. He was not here, but somebody has been "leaking" information.

Go ahead, Mr. Lee, with your statement.

Mr. LEE. The materials released by the select committee concerned, among other things, certain foreign communication intelligence activities of the U.S. Government.

The committee chairman also advised the representatives of State, Defense, and—

Chairman PIKE. Mr. Lee, you say it revealed certain foreign communication activities of the United States. Is that your language?

Mr. LEE. That is what I am advised, Mr. Chairman.

Chairman PIKE. Did you look at the language of what the committee released?

Mr. LEE. I did not.

Chairman PIKE. You are sitting here making a statement, saying that we have released language relating to the communications activities of the U.S. Government, and you did not even look at the language we released.

Mr. LEE. At the time the statement was originally drafted—I did see a copy of the document this morning. I have not read it in its entirety.

Chairman PIKE. Bless your heart.

Mr. Murphy.

Mr. MURPHY. Mr. Lee, do you know if permission was given by this committee to you directly to discuss this with Mr. Rogovin or anybody else, including Mr. Buchen or his assistant?

Mr. LEE. No, I did not.

Mr. MURPHY. You have no evidence orally or written giving you consent to be privy to this information, have you?

Mr. LEE. No.

Mr. MURPHY. Mr. Rogovin, did you have any permission, written or oral, from this committee to discuss this information with Mr. Lee this morning?

Mr. ROGOVIN. Mr. Murphy, the matter that was discussed this morning was the matter that the chairman disclosed to the public yesterday. We are not talking about classified information; as far as this committee is concerned, it declassified it yesterday by its vote. That is what the issue is—all about—four words that were declassified by the committee chairman and the committee.

Mr. MURPHY. But we are talking about testimony taken in executive session.

Mr. ROGOVIN. There was no discussion of testimony.

Mr. MURPHY. You were talking about an executive session with Mr. Lee this morning or yesterday.

Mr. ROGOVIN. I showed Mr. Lee the exact language.

Mr. MURPHY. My question is, have you discussed any testimony taken in executive session with Mr. Lee?

Mr. ROGOVIN. I don't think I did.

Chairman PIKE. Mr. Rogovin, you just said you showed Mr. Lee the exact language and Mr. Lee said he didn't read the exact language.

Mr. ROGOVIN. I pointed to four words here. He misspoke. He saw those four words.

Chairman PIKE. You know it is kind of funny. You insist that Mr. Lee come and make this statement this morning and then you sit there and correct his statement for him.

Mr. ROGOVIN. Ask the witness, Mr. Chairman, as to whether he saw the four words.

Chairman PIKE. I will ask the question I want to ask but I really do think it is kind of humorous that you have to keep correcting your witness.

Go ahead, Mr. Lee.

Mr. LEE. Mr. Chairman, I did not state I had not seen any part of the document.

Chairman PIKE. Of course you didn't. You stated that we had released foreign communication intelligence information and I asked you whether you read the language that we had released and you said no.

Go ahead.

Mr. LEE. I misunderstood the question, Mr. Chairman.

Chairman PIKE. Sure.

Go ahead.

Mr. LEE. The committee chairman also advised the representatives of State, Defense, and the CIA that it was his position—

Chairman PIKE. The committee advised that it was its position.

Mr. LEE. The committee chairman, that it was his position that the select committee possessed the inherent right to declassify any materials classified by the executive branch and that the select committee would continue to exert that inherent right in its sole discretion.

Chairman PIKE. Did you ask whoever told you this whether they had read the rules of our committee?

Mr. LEE. No, I did not.

Chairman PIKE. Have you ever read the rules of our committee?

Mr. LEE. I have not.

Chairman PIKE. Do you know that the rules of our committee specifically provide for this?

Mr. LEE. I was informed this morning that the rules as interpreted by the chairman—

Chairman PIKE. No, not as interpreted by the chairman—the rules.

Mr. LEE. I was informed of this rule this morning.

Chairman PIKE. Thank you.

Mr. LEE. We object strongly to the unilateral and unprecedented action of the committee in declassifying sensitive information furnished to the committee by the executive branch. The successful and efficient conduct of the work of several congressional committees depends upon the receipt by those committees of classified information which has consistently been delivered to those committees on the understanding that the integrity of the classification would be maintained. The action of the committee yesterday stands as a sharp departure from the traditional manner of handling classified information.

Chairman PIKE. What is the traditional manner of handling classification, Mr. Lee?

Mr. LEE. As I understand it, it is that classified information is delivered to the committee for its own use in something of a parallel to an in-camera inspection; that is, solely for the committee's legislative use.

Chairman PIKE. Who may declassify information, Mr. Lee? You are representing the Attorney General. Who in America may declassify information?

Mr. LEE. As specifically provided by a number of statutes, this may be done by the executive branch.

Chairman PIKE. And it is your position that the legislative branch of Government is not a coequal branch of Government as far as declassifying information is concerned?

Mr. LEE. Coequality doesn't enter into it.

Chairman PIKE. As far as declassifying information is concerned?

Mr. LEE. It is simply that this is not a legislative function.

Chairman PIKE. You say the legislative branch of Government has no right whatsoever to make anything public that the executive branch of Government does not want public. Is that your position?

Mr. LEE. That is our position, insofar as classified information is concerned. In addition, Mr. Chairman, in this particular instance; as to classification, Congress itself has not made the determination that declassification should be a legislative function. That question would arise if Congress had made the determination but it is our position that that is not a legislative function under the separation of powers.

Chairman PIKE. So what you say is that in this great democracy one branch of Government and one branch of Government alone may decide what is secret, and one branch of Government and one branch of Government alone may decide what is not secret. That is the position of the Attorney General of the United States of America, is that it?

Mr. LEE. There is one modification to that principle. Under the Freedom of Information Act declassification following an in-camera inspection pursuant to that act may be accomplished by a court.

Chairman PIKE. The judicial branch of Government now has the right to declassify information, is that correct?

Mr. LEE. That is what the Freedom of Information Act declared.

Chairman PIKE. But the legislative branch of Government alone is prohibited from ever saying that anything should not be secret?

Mr. LEE. It is our position that that is not a legislative function. I should also point out, however, that the legislative branch has never taken it upon itself, nor has it given to any of its arms the authority to declassify as it has to the judiciary in the Freedom of Information Act; and indeed the responses of Congress to this issue in the Case Act and the Freedom of Information Act are to the position that this is an executive function with the one narrow limitation in the Freedom of Information Act giving courts also that power. I should point out that the power of judicial review, a review of the acts of another branch of Government, is a traditional function under the separation of powers, of the judicial branch.

Chairman PIKE. How do you think Congress could ever exercise any oversight of any branch of the Government if the Congress could never declassify anything which that branch of the Government wanted to keep classified?

Mr. LEE. Let me say first, Mr. Chairman, that our immediate focus is not the question of what Congress may do, but the question of what this committee may do, because Congress has never authorized this. In addition, what we have here is a classic confrontation or a classic problem of the competing needs of coordinate branches of Government in carrying out their responsibilities.

Chairman PIKE. There, for the first time all day, I agree with you.

Mr. LEE. On the one hand the legislative branch has need for certain information in the carrying out of its investigative and legislative responsibilities. On the other hand, in maintaining national security and foreign relations interests, the executive branch has the need for security in certain instances.

Chairman PIKE. And Congress has no function in the national security?

Congress is nothing but a rubber stamp as far as national security is concerned?

Mr. LEE. Of course not, Mr. Chairman, but if I may finish the point I was making, these two interests of the executive on the one hand and the legislative on the other hand necessarily on occasion will conflict. The constitutional accommodation that has traditionally been made between congressional committees and the executive branch—and one which we feel has worked well and one whose continuance we would urge—has been the delivery of classified documents and I will start from the premise that they are sensitive, for the committee to treat as classified documents—that is to say, to examine for its own purposes and not to release to the public. It is the declassification of the materials and the release to the public to which we object.

Chairman PIKE. You are familiar with the *Gravel* case?

Mr. LEE. Yes, your honor—yes, Mr. Chairman.

Chairman PIKE. I am Mr. Chairman, but I am not your honor. The Supreme Court held what in the *Gravel* case?

Mr. LEE. Under the law the disclosure of classified information when published under the aegis of the speech and debate clause—

Chairman PIKE. In the course of his official duties?

Mr. LEE. Yes; was not criminally punishable. We are not taking the position—

Chairman PIKE. You are not taking the position that we are criminals, but you are taking the position that you are not going to tell us anything?

Mr. LEE. We are taking the position that we feel that this necessary accommodation between the responsibilities of the executive and the legislative branch, that has traditionally been followed, suffered a serious breach in the use of the classified information in an improper manner, and we are asking for a return to a traditional approach.

Chairman PIKE. If it is your position that we may never disclose information, how can we carry out our responsibilities?

Mr. LEE. The same way, Mr. Chairman, that for decades other committees in Congress—

Chairman PIKE. That is exactly what is wrong, Mr. Lee. For decades other committees of Congress have not done their job, and you have loved it in the executive branch. You tell us that Congress has been advised of this. What does that mean? It means the executive branch comes up and whispers in one friendly Congressman's ear or another friendly Congressman's ear, and that is exactly what you want to continue, and that is exactly what I think has led us into the mess we are in.

Mr. MURPHY. Mr. Chairman, usually the whispering has been done after the fact has been accomplished.

Mr. ROGOVIN. Mr. Chairman, may I be heard on this subject?

Chairman PIKE. Not at the moment. This is the witness you insisted on putting on. Please go ahead, Mr. Lee.

Mr. LEE. I would simply point out, Mr. Chairman, with regard to that matter, number one, that it is not Congress that has made the determination that a congressional committee should declassify. Indeed, the pronouncements of Congress in this area, both in the statute and legislative history, are contrary.

Chairman PIKE. Are you saying that the rules of the House of Representatives are not an act which should be honored?

Mr. LEE. I was not aware, Mr. Chairman, that the rules of the House gave a congressional committee the authority to declassify classified documents.

Chairman PIKE. You were not aware of that?

Mr. LEE. That is correct.

Chairman PIKE. Did you ask anybody?

Mr. LEE. I have the impression, and I don't know if it was because I asked—in the meeting last night or this morning—specifically that question or not, but that was my impression.

Chairman PIKE. Are you aware that the rules of this select committee of the House specifically provide that we shall, first of all, be bound by the rules of the House and, second of all, specifically provide that we may dispose—well, we may do exactly what we did yesterday.

Mr. LEE. I was told that the rules of this committee do permit declassification; yes.

Chairman PIKE. Are you of the legal opinion that the rules of this committee in any way violate the rules of the House?

Mr. LEE. Not the rules of the House necessarily, Mr. Chairman.

Chairman PIKE. You have not even read the rules of the House, have you?

Mr. LEE. That is correct.

Chairman PIKE. You have not even read the rules of this committee.

Mr. LEE. That is correct. I am saying they violate the policies of the Congress as expressed in their statutes and in the legislative history of the statutes and also the constitutional statutes of separation of powers. Continuing with my statement——

Chairman PIKE. I am going to interrupt you there. Have you read the resolution of the House which created this committee?

Mr. LEE. No, Mr. Chairman, I have not.

Chairman PIKE. So how on Earth can you say that we are violating the rules?

Mr. LEE. The rules to which I refer, Mr. Chairman, are not the rules of the House nor the rules of this committee, nor the resolution that created this committee, but rather the statutes the Congress has enacted as reflected both in their language and in the legislative history of those statutes and also the principles of separation of powers as incorporated in the Constitution of the United States.

Chairman PIKE. Mr. Lee, I can only say that the resolution of the House of Representatives, which created this select committee, does go into this issue. I would really suggest that before you come up here and tell us what the law is, you ought to read the resolution which created this committee.

Go ahead.

Mr. LEE. In addition, the release of classified information such as the committee has done, and has stated it will continue to do, causes a serious and irreparable——

Chairman PIKE. When did the committee state that?

Mr. LEE. This again, Mr. Chairman, is what I was told.

Chairman PIKE. That is more of your hearsay.

Mr. LEE. This causes a serious and irreparable harm to the national security and foreign relations of the United States. Finally, the committee's action is contrary to the expressed policies of Congress concerning the handling of classified information. I refer to the Case Act and the Freedom of Information Act. The committee's action is also inconsistent with the purposes of and policies of several statutes enacted by the Congress to prevent and penalize disclosure of properly classified information except as authorized by the executive branch.

The constitutional question raised by the committee's action is a most serious one. The executive branch has endeavored, in a spirit of comity and cooperation——

Chairman PIKE. Where did you get that information?

Mr. LEE. Mr. Chairman, over the years——

Chairman PIKE. You are not talking in relation to this committee. You are talking about over the years. Do you have any idea of the difficulties that this committee has had in getting information?

Mr. LEE. I am informed, Mr. Chairman, that there was a letter request that was delivered earlier this week. Subsequent to the letter request, there was oral advice that there was to be some modification of that letter request. There was then a subpoena with an approximate 2-day return time. That subpoena was complied with, but there was some question between the chairman——

Chairman PIKE. Are you saying the subpoena was complied with? Who told you that?

Mr. LEE. Mr. Wilderotter.

Chairman PIKE. All I can say is your information is not only hearsay but it is wrong. Go ahead.

Mr. LEE. The executive branch has endeavored, in a spirit of comity and cooperation, to work with the Select Committee on Intelligence, but it cannot accept this unprecedented action, which, in our view, is an unconstitutional act. The Congress is vested with the powers to legislate and to oversee the laws passed by it, but this action of the committee is not a legislative act, nor is it oversight. It is a vote by a single committee to review and overturn an executive act, and, therefore, beyond any power vested in it.

In view of the position expressed by the committee to our representatives yesterday, the President's responsibilities for the national security and foreign relations of the United States leave him no alternative but to request the immediate return of all classified materials previously furnished—

Chairman PIKE. Would you repeat that phrase?

Mr. LEE. The President's responsibilities for the national security and foreign relations of the United States leave him no alternative but to request the immediate return of all classified materials previously furnished to the committee.

Chairman PIKE. Did the President make this request?

Mr. LEE. The President made this request through his counsel.

Chairman PIKE. Do you know whether the President, himself, made this request?

Mr. LEE. Mr. Chairman, I did not personally discuss this with the President.

Chairman PIKE. Did you discuss it with the third-hand person to whom you talked, Mr. Wilderotter? Did Mr. Wilderotter say to you that the President had ordered the return of all classified information given to this committee—

Mr. LEE. The answer to that question is "Yes."

Chairman PIKE. So the President wants the return of all classified information given to this committee. Go ahead.

Mr. LEE. And to direct all departments and agencies of the executive branch respectfully to decline to provide the select committee with classified materials, including testimony and interviews which disclose such materials, until the committee satisfactorily alters its position.

Chairman PIKE. Satisfactorily alters its position? What did the President say he wanted the committee to do?

Mr. LEE. Once again, I have not discussed this personally.

Chairman PIKE. What were you told third-hand that the President wanted this committee to do?

Mr. LEE. What I was told and the thrust of our position, Mr. Chairman, is—

Chairman PIKE. Now who told you this, Mr. Wilderotter, again?

Mr. LEE. And Mr. Buchen.

Chairman PIKE. They told you they want the committee to alter its position. Would you just tell me what they want the committee to do?

Mr. LEE. To follow the same course that has been followed in other contexts with congressional committees in honoring the classification of classified documents, using them only for the limited purposes of the committee and its work and not declassifying by unilateral committee action and releasing the material to the public.

Chairman PIKE. In other words, the executive branch is telling this committee of the House that it may not continue to operate?

Mr. LEE. The question of continuance of operation, Mr. Chairman, is a judgment that you will have to make. What we are saying is that there was a breach of the classification that occurred when the material was unilaterally declassified by the committee and released to the public. Under those circumstances we have found it necessary to take this posture. I should add that we regret the committee's action and the subsequent necessity of this response. We would prefer the relationship of constitutional accommodation and cooperation that exists between the executive branch and other congressional committees.

Mr. HAYES. Mr. Chairman, may I ask, what information do you have about unilateral release? How much of the material released was unilaterally released, and how much was done bilaterally between the committee and by agreement with the parties here yesterday? Do you have information about that?

Mr. LEE. I understand—

Mr. HAYES. From whom do you understand?

Mr. LEE. Mr. Rogovin. I understand, Mr. Hayes, that most of the material that was released was pursuant to agreement and, of course, we have no objection to that. What we do object to, and the unilateral aspect, was the declassification of certain material as to which the action was not bilateral but was unilateral.

Mr. HAYES. Does your understanding go to how much was bilaterally agreed upon and how much was unilaterally extended to the public by the committee?

Mr. LEE. I understand the extent of the unilateral action was four words.

Mr. HAYES. Four words and no more than that?

Mr. LEE. Yes, Mr. Hayes, but we don't measure these matters in terms of numbers.

Mr. HAYES. So we do want to make it clear, and we are on the record, you do understand that much. Is that correct?

Mr. LEE. That is correct, but the even greater concern, Mr. Hayes, is not only these 4 words, or had there been 4, 6, or 800, but rather the policy, and the question as to what the committee's action might be in the future as to classified information that has been delivered and that might be requested in the future. That is our greater concern.

Chairman PIKE. I would just like to state for the record that it is the executive branch of the Government and not the legislative branch of the Government which has revealed the fact that it was four words. This immediately is going to cause all the media in the country and all of the intelligence operations in the Nation to say, "Which four words?" Thereafter, I don't know whether the executive branch of the Government in their unilateral capacity will pinpoint the particular four words for the benefit of all of the world's intelligence-gathering operations or not; but I just think it is useful to have it on the record that this was mentioned by the executive branch and not the legislative branch.

Mr. Johnson?

Mr. JOHNSON. Thank you very much. How we voted yesterday is still a matter of committee secrecy, so the questions I ask should not be interpreted or should not be reflective of anything other than my desire to probe your argument a little further.

You say that the committee did not violate any criminal statute by its action yesterday?

Mr. LEE. That would be my view because of the *Gravel* case.

Mr. JOHNSON. And didn't violate any civil statute?

Mr. LEE. Because of the operations of the speech and debate clause, I would think not.

Mr. JOHNSON. That would be my interpretation. So if the committee didn't violate any statute, what we have is an arbitrary determination by the executive branch?

Mr. LEE. Not at all. We are not here seeking to advise that there has been either criminal or civil violation by the committee; rather that there has been a breach in the understanding that has traditionally been followed that we think is based not only on congressional action but also on constitutional principle.

Mr. JOHNSON. But an understanding is not law. You would agree with me on that point? Past tradition is not law?

Mr. LEE. What I said is it is based on constitutional principle and that is certainly law; yes.

Mr. JOHNSON. If we get only to the Constitution, we talk about legal argument?

Mr. LEE. And also the policy though not expressly dealing with this particular matter of declassification—the consistent policy of Congress has been to vest declassification in the executive rather than the legislative.

Mr. JOHNSON. You are not seriously arguing, are you, that policy is law?

Mr. LEE. No, but I would think, Mr. Johnson, in working out—

Mr. JOHNSON. I am trying to see your legal argument. If your argument is that policy in the past is law which is binding, you should say so. If it isn't, admit it, and let's get to the constitutional argument.

Mr. LEE [continuing]. What I am saying is that in order for this committee to have the authority to declassify, there must be a statutory basis for it. There is not a statutory basis for it and indeed the pronouncements of Congress have been to the contrary. That is what I am saying.

Mr. JOHNSON. That is your policy argument. Now let's go to the Constitution.

Mr. LEE. It is more than that, because it goes to the absence of authority in this committee to declassify.

Mr. JOHNSON. There has been no civil or criminal violation.

Mr. LEE. That is correct.

Mr. JOHNSON. So you are saying we have to have a positive authority to do something when there is no negative prohibition?

Mr. LEE. No; so far as the authority of this committee to declassify is concerned, the answer to that question is "Yes."

Mr. JOHNSON. Would you say that is rather an unprecedented situation?

Mr. LEE. Not at all. This committee is certainly bound by both the authorization of Congress and by constitutional principle.

Mr. JOHNSON. The rules of the House?

Mr. LEE. The rules of the House, also.

Mr. JOHNSON. The resolutions of the House?

Mr. LEE. Yes; but the resolutions of the House in and of themselves cannot override a principle of constitutional law.

Mr. JOHNSON. All right; now we are getting back to that finally. What is the constitutional principle that the committee has violated?

Chairman PIKE. And where in the Constitution is it found?

Mr. MURPHY. Where is it set forth?

Mr. LEE. I am referring to the doctrine of separation of powers. Like so many of our great constitutional principles, it is not expressed in the Constitution, but it pervades the entire document.

Chairman PIKE. You are saying it is not in the Constitution?

If the gentleman whispering in your ear would like to speak publicly, it is all right.

Mr. LEE. What was the question, Mr. Chairman?

Chairman PIKE. The question was, it is not in the Constitution?

Mr. LEE. The doctrine of separation of powers?

Chairman PIKE. Not the doctrine, the prohibition you are talking about is not found in the Constitution?

Mr. LEE. The Constitution does not specifically say, Mr. Chairman, that a congressional committee may not unilaterally declassify documents.

Chairman PIKE. Does it say that only the executive branch may declassify documents?

Mr. LEE. No, but the Constitution does make the President the Commander in Chief of the Armed Forces; it charges him with certain responsibilities, and included within those responsibilities are the foreign relations of the United States and—

Chairman PIKE. And it says the Congress shall raise and support armies and provide and maintain the Navy, and if there had been an Air Force at the time, it probably would have said something about that, too.

Mr. LEE [continuing]. That is very correct, Mr. Chairman, and that gets back to the point I was trying to make earlier—that necessarily in the discharge of that congressional responsibility and the executive responsibility, there comes about a need for accommodation of the two responsibilities.

Mr. HAYES. Mr. Chairman, may I ask a question?

Chairman PIKE. Certainly, Mr. Hayes.

Mr. HAYES. Do you think perhaps that accommodation was reached when Mr. Marsh, who is one of the officials of the White House, came to the committee chairman carrying documents and made arrangements for the transportation of those documents and made arrangements for the compliance with the subpoenas issued? And in existence at the time he did that were not only the rules of this committee—clearly spelling out its powers and what it had set forth to be guidance—but also in existence, to the knowledge of everybody concerned, was the House resolution establishing this committee? That the resolution set out the fact that the committee had assumed for itself by vote of the Congress the power to disclose documents

coming here? Should we not interpret that as having been part of the ground rule of the accommodation of which you speak, and don't you think that amounts, then, to any waiver of any claims that you are trying to make here this morning?

Mr. LEE. No, I don't.

Mr. HAYES. Do you think, then, that what they can do is accommodate in the morning and disaccommodate in the afternoon as they wish and as the circumstances present themselves for disaccommodating this committee?

Mr. LEE. No, I certainly don't, Mr. Hayes. The rules of this committee should not be taken as abrogating the longstanding principle that has been uniformly followed elsewhere in congressional committees.

Chairman PIKE. Are you saying no congressional committee has ever divulged classified information? Are you saying that, Mr. Lee?

Mr. LEE. I really don't know, Mr. Chairman, if any congressional committee ever has. I am not aware of any such divulging. I do know it is the—

Chairman PIKE. Did you ever ask?

Mr. LEE. Yes.

Chairman PIKE. And what was the answer?

Mr. LEE. So far as—

Chairman PIKE. Whom did you ask?

Mr. LEE. Mr. Wilderotter.

Chairman PIKE. And he said no congressional committee had ever in the past divulged any classified information?

Mr. LEE. So far as he knew, he said he was not aware of any committees having taken action to declassify and to release to the public.

Mr. HAYES. Mr. Chairman.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Is it your position, then, that the executive branch has been tricked somehow—that not knowing the rules and not knowing the resolution of the House, that through their ignorance of the law they came up here assuming that prior executive disclosures to the Congress, which had been to one or two people, had never been released. That they didn't bother to read the resolution or the rules of the committee and therefore were tricked into bringing those things down? Is that your position?

Mr. LEE. I think it is fair to say, Mr. Hayes, that there was certainly an assumption that the rules of the committee—the general catch-all phrase that comes at the end of the particular rule—would not be used as a basis for an attempt on the part of this committee unilaterally to declassify and to release.

Chairman PIKE. Mr. Lee, I would like to read to you a little bit of the Constitution. Article I, section 5, states: "Each House shall keep a Journal of its Proceedings"—and it doesn't say the Congress—"each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy"—"their judgment," not the executive branch's judgment. What do you think about that?

Mr. LEE. Of course, that has to do, Mr. Chairman, with the journal of proceedings in the House. I really don't think it has anything to do with classified documents.

Mr. MURPHY. Mr. Chairman?

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

You know, Mr. Lee, you are a lawyer, and obviously you are a very, very professional man. There was a debate that took place in this very building last summer, and it seems to me if I shut my eyes, I hear the same argument I heard in the defense of President Nixon. He has a right to keep things secret, he has a right not to turn over tapes, and he has a right not to turn over documents. But I thought the Supreme Court had settled that matter. But what you people in the executive department fail to realize is that we represent the House of the people of the United States, and we are charged by the Constitution with overseeing the spending of the taxpayers' money; their money, Mr. Lee, not yours, not mine, but the people's.

We stand for election every 2 years, and we are charged with that responsibility. And I resent bureaucrats coming to me with their interpretation of the Constitution. It is their interpretation of the Constitution. I can read English; you can read English. We are charged by this House to find out how the money is being spent, where it is being spent, if people's rights are being violated, and all we get is nothing but frustration and noncooperation. And I personally resent it.

You can hide behind all the legalisms but we are not about to betray this country; nobody on this committee is; just like you are not, and we haven't divulged anything brought out in the executive session. The only thing I have heard out of the executive session is an attorney representing the CIA talking to people who weren't in the executive session, and that is in violation of our rules, and I resent it.

Thank you, Mr. Chairman.

Chairman PIKE. Mr. Lee, you haven't finished your statement, have you?

Mr. LEE. I have, Mr. Chairman.

Chairman PIKE. Mr. Lee, did you read your entire statement?

Mr. LEE. Yes, Mr. Chairman, I did.

Chairman PIKE. So we have it all in our record at this point?

Mr. LEE. Yes, Mr. Chairman.

[The full text of Mr. Lee's statement follows:]

STATEMENT OF REX E. LEE, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE

My name is Rex E. Lee. I am an Assistant Attorney General, and I appear this morning on behalf of the Executive Branch.

We understand that this Committee yesterday, acting in executive session and over the protests of representatives of the Department of State, the Department of Defense, and the Central Intelligence Agency, voted to declassify and release to the public, and did in fact subsequently make available to the public, materials properly classified under law. These materials had been provided to the Committee as classified documents pursuant to its requests. The materials released by the Select Committee concerned, among other things, certain foreign communication intelligence activities of the United States Government.

The Committee Chairman also advised the representatives of State, Defense, and the CIA that it was his position that the Select Committee possessed the inherent right to declassify any materials classified by the Executive Branch and that the Select Committee would continue to exercise that asserted inherent right in its sole discretion.

We object strongly to the unilateral and unprecedented action of the Committee in declassifying sensitive information furnished to the Committee by the Executive Branch. The successful and efficient conduct of the work of several con-

gressional committees depends upon the receipt by those committees of classified information, which has consistently been delivered to those committees on the understanding that the integrity of the classification would be maintained. The action of this Committee yesterday stands as a sharp departure from the traditional manner of handling classified information to accommodate the respective constitutional responsibilities of the Executive and Legislative branches. In addition, the release of classified information such as the Committee has done, and has stated it will continue to do, causes serious and irreparable harm to the national security and foreign relations of the United States. Finally, the Committee's action is contrary to the express policies of Congress concerning the handling of classified information. I refer to the Case Act (1 U.S.C. Sect. 112b) and the Freedom of Information Act (5 U.S.C. Sect. 552). The Committee's action is also inconsistent with the purposes and policies of several statutes enacted by the Congress to prevent and penalize disclosure of properly classified information except as authorized by the Executive Branch.

The constitutional question raised by the Committee's action is a most serious one. The Executive Branch has endeavored, in a spirit of comity and cooperation, to work with the Select Committee on Intelligence, but it cannot accept this unprecedented action, which in our view is an unconstitutional act.

The Congress is vested with the powers to legislate and to oversee the administration of the laws passed by it, but this action of the Committee is not a legislative act nor is it oversight. It is a vote by a single Committee to review and overturn an Executive act and, therefore, beyond any power vested in it.

In view of the position expressed by the Committee to our representatives yesterday, the President's responsibilities for the national security and foreign relations of the United States leave him no alternative but to request the immediate return of all classified materials heretofore provided by any department or agency of the Executive Branch and direct all departments and agencies of the Executive Branch respectfully to decline to provide the Select Committee with classified materials, including testimony and interviews which disclose such materials, until the Committee satisfactorily alters its position.

We regret the Committee's action and the consequent necessity for this response. We would prefer the relationship of constitutional accommodation and cooperation that exists between the Executive Branch and other congressional committees.

Mr. LEE. Mr. Chairman, with apologies, there have been several references made this morning to the resolution. I was just handed a copy of the resolution creating the select committee, and I note that it says:

The select committee shall institute and carry out such rules and procedures as it may deem necessary to prevent (1) the disclosure, outside the select committee, of any information relating to the activities of the Central Intelligence Agency or any other department or agency of the Federal Government engaged in intelligence * * *.

Chairman PIKE. I would read the very last words of the same clause you read. You are a better lawyer than that, Mr. Lee. The last words are "not authorized by the select committee to be disclosed." What do you think we were doing when we used that language?

Mr. LEE. My point is—

Chairman PIKE. Don't read just a part of a paragraph to us.

Mr. LEE [continuing]. I intended to finish, Mr. Chairman, but the point is, I think that sentence, which I assume to be the operative sentence to which the chairman was referring, has to be read against the traditional practice of the Congress and the declarations of the Congress and other contexts concerning classified materials.

Chairman PIKE. That language is precise and clear, and it doesn't have to be read against any prior policy, and we all know what the prior operation has been.

If you are through with your statement, do I understand now that all of the executive branch witnesses have been ordered this morning not to testify before the committee?

Mr. LEE. That is not correct, Mr. Chairman.

Chairman PIKE. And the executive branch witnesses may testify on what, Mr. Lee—anything which is not classified?

Mr. LEE. That is correct.

Chairman PIKE. And there isn't anything in our subject matter which is not classified, is there, Mr. Lee?

Mr. LEE. On that subject, Mr. Chairman, I really do not know.

Chairman PIKE. Oh, come on, Mr. Lee. You don't know? The whole statement that you just read to us was about how all of this information which had been turned over to the committee was classified.

Mr. LEE. Not at all, Mr. Chairman. I understand there is some information that is classified and some that is not. Certainly as to much of the information as happened yesterday bilateral agreement can be reached as to declassification.

Chairman PIKE. Would you permit the declassification at this time of the headline which was included in the report of the National Intelligence Bulletin on the day of the coup in Cyprus?

Mr. LEE. I am really not acquainted with that document, Mr. Chairman, and I am not one who is authorized to declassify. But the point is that as to anything that has happened in the past, it is in the past. What we are concerned about is the proceedings of the committee in the future. We want to cooperate.

Chairman PIKE. I am concerned about more than the proceedings of this committee in the future. I am concerned about the ability of Congress to function as a coequal branch of government. I believe that the Central Intelligence Agency—perhaps the Attorney General, but I find it hard to believe—would simply prefer that we operated in a dictatorship where only one branch of the Government has any power over secrecy.

I simply submit to you that that is not the way I read the Constitution of the United States, and it is not the way I read the traditions of our country, which I frankly find far more persuasive than the traditions of secrecy which have crept into and permeated our proceedings of the past few years.

Do you see any reason for continuing the hearing this morning?

Mr. JOHNSON. No, I don't, but I think we should get the vital paragraphs that were the subject of all this, for the public record.

Chairman PIKE. Yes. The staff director will read the language which this committee found to be top secret yesterday morning, and which this committee released yesterday afternoon, not in any manner indicating which the four words were.

Mr. ROGOVIN. Mr. Chairman, I think it would be fair to say that the Central Intelligence Agency said this was—

Chairman PIKE. Mr. Rogovin, would you please wait until you are recognized. At this point, I am going to get the statement in the record.

Mr. FIELD. Thank you, Mr. Chairman. The following five paragraphs were voted on yesterday by the committee:

Syria-Egypt.—The movement of Syrian troops and Egyptian military readiness are considered to be coincidental and not designed to lead to major hostilities. DIA Intelligence Summary, October 3, 1973.

Egypt.—The exercise and alert activities under way in Egypt may be on a somewhat larger scale and more realistic than previous exercises, but they do not appear to be preparing for a military offensive against Israel. Central Intelligence Bulletin, October 5, 1973.

Egypt.—The current, large-scale mobilization exercise may be an effort to soothe internal problems as much as to improve military capabilities. Mobilization of some personnel, increased readiness of isolated units, and greater communication security are all assessed as parts of the exercise routine * * * there are still no military or political indicators of Egyptian intentions or preparations to resume hostilities with Israel. DIA Intelligence Summary, October 6, 1973.

Israel-Egypt-Syria.—Both the Israelis and the Arabs are becoming increasingly concerned about the military activities of the other, although neither side appears to be bent on initiating hostilities * * *. For Egypt a military initiative makes little sense at this critical juncture * * *. Another round of hostilities would almost certainly destroy Sadat's painstaking efforts to invigorate the economy and would run counter to his current efforts to build a united Arab political front, particularly among the less militant; oil-rich states. For the Syrian president, a military adventure now would be suicidal. Central Intelligence Bulletin, October 6, 1973.

The Watch Committee met in special session at 0900 on October 6, 1973, to consider the outbreak of Israeli-Arab hostilities * * *. We can find no hard evidence of a major, coordinated Egyptian/Syrian offensive across the Canal and in the Golan Heights area. Rather, the weight of evidence indicated an action-reaction situation here a series of responses by each side to perceived threats created an increasingly dangerous potential for confrontation. The current hostilities are apparently a result of that situation * * *. It is possible that the Egyptians or Syrians, particularly the latter, may have been preparing a raid or other small-scale action. Special Report of the Watch Committee October 6, 1970.

[NOTE.—Asterisks denote omitted material in original post mortem analysis.]

Those are the five paragraphs, Mr. Chairman.

Chairman PIKE. Mr. Rogovin, did you want to say something?

Mr. ROGOVIN. I simply wanted to say that the bulk of the five paragraphs were declassified by the Director of Central Intelligence yesterday. I believe you left the impression that this was the matter which the committee had voted on—

Chairman PIKE. This is the matter the committee voted on, Mr. Rogovin. I asked you after we argued about certain language whether you would agree that this be released or whether you would rather have us vote on it. You said that you could not agree with that if certain language remained in and we voted on those five paragraphs.

Mr. ROGOVIN. Mr. Pike, I think it is important to make the point that we were working with the committee yesterday to make as much of this document public as could properly be made public. The Director of Central Intelligence, who has a statutory responsibility with respect to "sources and methods," objected to a phrase. That is what the committee voted on.

Chairman PIKE. When we started out yesterday morning, Mr. Rogovin, you said releasing the first one of those paragraphs would reveal the sources and method, and then you changed your mind. So I am tired of hearing this phrase about sources and methods. They always use the phrase sources and methods and the phrase national security. But in the final analysis the issue is, "Shall Congress be a coequal branch of the Government?"

Mr. ROGOVIN. We had hoped that we would be able to work out questions of sensitivity here with the committee without the necessity of unilateral action.

Chairman PIKE. We tried, and we accepted some of your recommendations, and we did not accept all of your recommendations.

If there is no further business, the committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 11:31 a.m., the committee adjourned, subject to the call of the Chair.]

THE 1968 TET OFFENSIVE IN SOUTH VIETNAM

THURSDAY, SEPTEMBER 18, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Otis O. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Milford, Hayes, McClory, Treen, Kasten, and Johnson.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; and Gregory G. Rushford, investigator.

Chairman PIKE. This morning, after another slight delay, the committee will resume its hearings, this time on the subject of the nature and quality of our intelligence operations in Vietnam in the period preceding the Tet offensive.

Our witness today is Mr. Samuel Adams, who for a long time was the Central Intelligence Agency's chief analyst on the subject of the Vietcong, and I guess perhaps for some period he was their only analyst on the subject of the Vietcong. He is eminently well qualified to address us today.

Mr. Adams, you are free to proceed.

STATEMENT OF SAMUEL A. ADAMS, ROUTE 4, BOX 240, LEESBURG, VA., FORMER CIA EMPLOYEE

Mr. ADAMS. My name is Samuel A. Adams. My address is Route 4, Box 240, Leesburg, Va. I was employed by the Central Intelligence Agency for about 10 years until June 1, 1973, when I resigned.

For 7 of the 10 years, I was the Agency's principal analyst on the Vietcong. For 2 of them—from September 1965 until November 1967, the eve of the Communist's Tet offensive—I was the only analyst at CIA headquarters studying the Vietcong full time. The Agency's present director, Mr. William E. Colby, has since stated that "The Agency's assessments in the late 1960's were based in substantial measure on Mr. Adams's work."

Since my resignation, I have written a number of articles highly critical of the CIA. The most recent appeared in the May 1975 edition of Harpers magazine. Commenting on the article, Mr. Colby declared on June 4, 1975, that the charges it contained "go to the very heart of the intelligence profession."

I might add, I cleared that article with the Agency.

[The article referred to—"Vietnam Cover-Up: Playing War With Numbers"—is printed on pages 881-893 of the appendixes of these hearings.]

Mr. ADAMS. My testimony today deals with the Vietcong Tet offensive, which caught the American intelligence community largely by surprise. In the last few days, I understand, you have heard of other instances in which the U.S. Government was taken aback by events in foreign lands. These surprises, however, differ from our astonishment at Tet in one key respect. Whereas they arose from such factors as negligence, or a misreading of evidence, the Tet surprise stemmed in large measure from corruption in the intelligence process. In the months before the offensive, U.S. intelligence had deliberately downgraded the strength of the enemy army in order to portray the Vietcong as weaker than they actually were. Although our aim was to fool the American press, the public and the Congress, we in intelligence succeeded best in fooling ourselves.

What was the nature of the surprise at Tet? President Johnson—whose resignation the offensive caused—put his finger on it in his book "The Vantage Point." "We knew a show of strength was coming," he wrote, "it was more massive than we anticipated." It is my belief, and I think the evidence shows, that American intelligence had so denigrated the Vietcong's capabilities that we simply could not have predicted the size of the Tet attack. You will remember that the offensive hit not only Saigon and the American Embassy, but 40 out of 44 province capitals, and over 100 district seats.

I might add, in the 2 or 3 weeks following the Tet offensive there were over 2,000 American dead.

My story begins in the second half of 1966. During that period, I discovered at CIA headquarters a series of documents which suggested that the strength of the Communist forces in Vietnam—then officially carried at just under 300,000—was more likely double, or close to 600,000. In the following months, American intelligence—including Westmoreland's order of battle section, whose job it was to keep track of the various categories of the Vietcong forces—looked the documents over and concluded that my findings about numbers had a large measure of validity.

By mid-1967, the documentary evidence for higher numbers was so massive that there was no longer any question that the enemy army was much bigger than we thought. The CIA's position at this point was that we should increase the enemy strength estimate to reflect the evidence.

Fearing the public reaction to higher numbers, however, Westmoreland's command was lobbying to keep the estimate at its official levels—that is, below 300,000. And in July 1967, the command began to argue that certain categories of Vietcong—who had been in the estimate since 1962—should be dropped. Furthermore, they began to sharply "scale down"—this was their own wording—the number of Vietcong soldiers in certain types of units in the official order of battle.

I would like now to begin quoting telegrams and memoranda, many of them written in the CIA, some in the White House, some in Saigon, most of which never appeared before in public, which illustrates my assertions.

The first is "Secret, Eyes Only" cable sent from General Abrams in Saigon to General Wheeler, head of the Joint Chiefs of Staff, on August 20, 1967. It indicates the newly found higher numbers were "in sharp contrast to the current overall strength figure of about

299,000 given to the press here." He thereupon suggested dropping two categories of Vietcong from the strength estimate in order to keep it at its old level. The main reason for this, he indicated, was press reaction. He went on. "We have been projecting an image of success over the recent months * * * he stated, and if we allow the higher numbers to become public, "all available caveats and explanations will not prevent the press from drawing an erroneous and gloomy conclusion. * * * All those who have an incorrect view of the war will be reinforced and the task will be more difficult." General Westmoreland later signed off on the cable and it was sent to the CIA's then Director Richard Helms. It received wide distribution within the Agency.

Twenty days later, an intelligence conference convened in Saigon to hash out the enemy numbers. The conference, which included representatives from Westmoreland's command, from CIA, DIA, and State Department Intelligence, concluded with the CIA caving in and signing an agreement which kept the enemy force estimate at its old size. I described the conference, which I attended, in my Harper's piece. The agreement dropped the two categories from the estimate which General Abrams had suggested on August 20, and accepted the military's scaled down numbers. After the conference was over, Westmoreland's public relations staff drafted a briefing for the press on the new order of battle. The draft was sent to Washington for review.

The order of battle, incidentally, is the estimate of enemy strength.

The draft briefing was so blatantly misleading that it made some CIA officials question the wisdom of having caved in to the military's numbers at Saigon. I quote now from comments on the draft by a CIA official, Mr. Paul V. Walsh, of the Deputy Directorate of Intelligence. "As seen from this office," wrote Mr. Walsh on October 11, 1967, "I must rank [the briefing] as one of the greatest snow jobs since Potemkin constructed his village." It was so bad, he concluded, that it "gives us all the justification we need to go straight again."

A few days later, however, it was evident that Mr. Walsh had changed his mind about going straight. On October 23, 1967, he wrote, "We feel that the order of battle figures generally understate the strength of enemy forces but recognize the apparent obligation for the estimate to be consistent with the figures agreed to at Saigon." Shortly thereafter, I was retired as the CIA's chief estimator of VC numbers and the job was put under the supervision of Mr. Walsh.

Five days after the second Walsh memo, Ambassador Bunker forwarded his views on the matter from Saigon in a "Secret" cable to the White House ("Eyes Only Rostow," dated October 28, 1967). He stated, "I understand that the Department of Defense has approved a draft press briefing on the new VC/NVA order of battle picture and sent it to the White House for final approval. One aspect of it still bothers General Westmoreland * * * and myself. Given the overriding need to demonstrate progress in grinding down the enemy, it is essential that we do not drag too many red herrings across the trail." He went on to say that to admit to the press that they had dropped certain categories "from the order of battle seems to me simply to invite trouble. We may end up with stories that enemy strength is greater rather than less. Far better in our view is to deal with the matter orally if it arises * * * (in the hopes of) forestalling many

confusing and undesirable questions." He concludes by saying, "Sorry to badger you about this, but the credibility gap is such that we don't want to end up conveying the opposite of what we intend."

Two weeks later the press briefings began. On November 11, 1967, Westmoreland's command in Saigon told the press that Vietcong/NVA strength had actually declined to 242,000 and that the decline was due to heavy casualties and plummeting morale. No mention was made of the categories dropped from the estimate, as you can tell by the New York Times account which appeared the next day. At a press conference Westmoreland held on November 22, the same figures were put forward. The New York Daily News headlined it as "The Enemy Is Running Out of Men." And then at a third one on November 24—it was finally admitted that the two categories had disappeared. But by this time, the press was so thoroughly confused with conflicting stories that the disappearance went unnoticed. On the same day, George Allen, Deputy Assistant for Vietnamese Affairs to the Director, Mr. Helms, wrote that Westmoreland's numbers were "contrived" and "phony" and that his estimates were "controlled by a desire to stay under 300,000."

Three days later, on November 27, 1967, the CIA station sent from Saigon a most remarkable memorandum. In effect, it predicted the Tet offensive. Written by a team of analysts named Joseph Hovey, Bobby Layton, and James Ogle, it stated that the Vietcong were planning "a political and military offensive utilizing all VC assets" and that the offensive was to include military attacks on "all major cities" in South Vietnam. On December 14, 1967, I was asked to comment on the memorandum.

I might just note that that is what—3 months before the Tet offensive began? A pretty good estimate.

Mr. McCLORY. May I make an inquiry, Mr. Chairman? Is the witness testifying with respect to unclassified materials—materials that were classified or secret and then were declassified—or has some of this material not yet been declassified or made public?

Mr. ADAMS. A lot of this has not yet been made public. This is taken from notes that I took.

Mr. McCLORY. Mr. Chairman, I would just like to make an inquiry as to the appropriateness of receiving in public session testimony which relates to classified materials.

The witness has for the first time mentioned individuals' names. I don't know about the significance of this, but I think we should be extremely cautious that we do not, in a public session—without having taken any action to determine whether or not this should be made public—receive the testimony and the information in public session.

Chairman PIKE. Well, it seems to me that if the witness is talking from his own notes, he has the right to do so. Obviously under our committee rules, at any time any member of the committee cares to, he may move that we go into executive session and at that time a record vote would be taken.

Mr. MILFORD. Mr. Chairman, in view of this committee's desire to cooperate and in view of the fact I don't believe any of us would want to harm our intelligence effort, I would at this time move we go into executive session.

Chairman PIKE. Is there any discussion on the motion?

Mr. TREEN. There have been direct quotations from material which has been designated by the witness as "secret, eyes only." It may very well be that we will want to make this public, but I do think simply because the witness says that these quotations are in his notes that they are not classified. They appear to be direct quotations from material that remains classified at this time. Accordingly, I think we have no choice but to go into executive session for a discussion of this.

I support the motion.

Chairman PIKE. I am going to vote to the contrary, for this reason: First of all, I don't think that anything which the witness has revealed or is going to reveal is going to jeopardize our operations in Vietnam. The witness himself is prepared to make these statements. He is making them public; we are not making them public.

If, on the other hand, we go into executive session, then we are once again confronted with the question of "our" making them public. I personally would just as soon not be confronted with that particular situation at this particular time.

Mr. McCLORY. May I make this additional comment. I have been very anxious to hear the testimony with regard to this subject—our entire inquiry into the subject of the Tet offensive and our failures there. However, I feel we have provided a forum here. We are an instrument through which flows information which may still be classified, or which might in some sense adversely affect our national interests, or individuals whose names might be involved here. So I would exercise a high sense of caution. Not that I would ultimately want to conceal any of the information we are going to receive; but to be sure that we don't make a mistake in that respect, I would favor our going into executive session at this time and making a decision at a later time with respect to the declassifying or the publicizing of the information which we are receiving.

Chairman PIKE. I think, just as a practical matter, it might be useful to comment that the press already has the full statement. Therefore, what would be accomplished by going into executive session I find very hard to understand; but the clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

By a vote of 6 to 3, the motion is not agreed to.

Please proceed, Mr. Adams.

Mr. ADAMS. I may talk about the material I used?

Chairman PIKE. You may proceed with your statement. You may do whatever you want, Mr. Adams. You are free to testify.

Mr. ADAMS. Before I go on with my statement, I would like to make a couple of small comments. Nothing that I have in here concerns sources or methods, and the people I mentioned are either not undercover or they have retired.

For example, I mentioned Joseph Hovey, Bobby Layton, and James Ogle. Joseph Hovey and James Ogle are no longer with the Agency. Bobby Layton is in a job that is perfectly open and people know about it. I don't intend to talk about anybody who is undercover.

Mr. MILFORD. When you say it concerns no methods or people, or what have you, is this your own opinion or is this something that has been cleared with the intelligence community and that they concur with?

Mr. ADAMS. That is my own opinion, sir.

Mr. MILFORD. In other words, you have not followed the normal procedures of checking with the intelligence community itself?

Mr. ADAMS. No, sir; not on all of these documents.

Mr. MILFORD. Thank you very much.

Mr. DELLUMS. Mr. Chairman, I would say my distinguished colleague is taking a little leeway when he says "normal procedures." I am not sure there are any normal procedures for witnesses going before the intelligence community to clear their testimony.

I would think that is taking some liberties that I don't think we have a right to take.

Mr. MILFORD. To clarify my remarks, what I was referring to there was a practice that is usually followed to inadvertently prevent anyone for any purpose, regardless of where they are going, from damaging our intelligence efforts.

Mr. DELLUMS. We will do everything we can to make sure we don't or that any other witness doesn't.

Chairman PIKE. Proceed, Mr. Adams.

Mr. ADAMS. To continue, concerning this memorandum written November 27, 1967, which in essence predicted Tet, which said all major cities were going to be hit. I was asked to comment on it on the 14th of December. The only flaw I could find in it was that it used the official order of battle figures which had been agreed to at Saigon. My comments included the following:

The Vietcong main battle forces are considerably larger than we give them credit for. The order of battle omits a myriad of small, but elite units; it frequently underestimates the size of units it does carry; it does not take into account many North Vietnamese soldiers who are already in the South. The comments went on to say that the number of service troops agreed to at Saigon was fraudulently low, and the official number of guerrillas was shy by at least 40,000. Furthermore, it stated, the official estimates omitted 100,000 self-defense militiamen, one of the categories dropped from the estimate at Saigon, tens of thousands of assault youth, scores of thousands of such VC cadres as the armed public security police, and goodness knows what else. The next day, on December 16, 1967, the memo which predicted Tet was forwarded to the White House. But it failed to mention that something might be awry with the official strength estimates.

I might add that I handed my comments on it into the Director's office.

Likewise, a few days earlier, on December 8, 1967, the CIA had sent to Secretary of Defense McNamara a memorandum which also used the official numbers agreed to in Saigon. That part of the memo which concerned Vietcong strength had been superintended by Mr. Walsh, the new overseer of VC numbers.

Congress was also fed the phony figures. The Director's new year briefing to Congress, for example, not only used the Saigon numbers but even stated that the enemy's strength was declining. It did not mention that any categories had been dropped from the order of battle. At the time I was working in the Director's office, and was issuing almost daily warnings about unaccounted-for units, including, incidentally, large numbers of artillery formations.

The Tet offensive hit in the early hours of January 30, 1968. On that day, I drafted two papers—one a memorandum, the other a cable. The memorandum, which constituted my resignation from the office of the Director, stated that the official VC strength estimate was "a monument of deceit." The cable, intended for Saigon, noted that many units which had participated in the attacks that morning had never been included in the order of battle. The draft cable concluded that it was "something of an anomaly to be taking so much punishment from Communist soldiers whose existence is not officially acknowledged. The draft cable, never sent, was later returned to me by Drexel Godfrey, Chief of Office of Current Intelligence of the DDI, with the following notation: "To Sam Adams. Suggest you hold this until things quiet down * * *."

Gentlemen, I imagine all of you will remember the shock of the Communist Tet offensive. I can assure you that your wonderment at the size of the attack was shared by virtually everyone in the executive branch of the Government, including most people who worked in intelligence. There were exceptions. One of them was myself. Another was George Allen. But unfortunately neither of us mattered, since we were in no position to do anything with our peculiar knowledge.

Rather than belabor the point, I would like to close my prepared testimony with two observations, one in the form of a question, the other in the form of a practical example.

The question is this: What if, on December 15, 1967, when the Saigon memo which predicted the Tet offensive went to the White House, it had been accompanied by an estimate that the VC Army was almost twice as big as we thought—would the White House have put two and two together? I don't know. It never happened.

The practical example is this. In the days following Tet, some 1,200 American aircraft in Vietnam were destroyed or damaged, most by shrapnel from artillery shells. This was totally unexpected, probably because so few Vietcong artillery units were carried in the order of battle—even though evidence was abundant that there were many. But this evidence was never assiduously sought out, apparently for the reason that any influx of new units would have caused the VC strength estimates to lurch sharply upward—something the intelligence estimators sought to avoid. The end result was that the planners—who worry about such matters as how to protect airplanes—had failed even to build revetments, which are really only mounds

of earth. And thus it happened that on the early morning of January 30, 1968, most American airplanes in Vietnam were parked wingtip to wingtip—like the P-40's at Hickam Field at Pearl Harbor.

Thank you, gentlemen, for allowing me to present this testimony.
[Mr. Adams' prepared statement follows:]

PREPARED STATEMENT OF SAMUEL A. ADAMS

My name is Samuel A. Adams. My address is Route 4, Box 240, Leesburg, Va. I was employed by the Central Intelligence Agency for about 10 years until June 1, 1973 when I resigned.

For 7 of the 10 years, I was the Agency's principal analyst on the Vietcong. For two of them—from September 1965 until November 1967, the eve of the Communist's Tet offensive—I was the only analyst at CIA headquarters studying the VC fulltime. The Agency's present director, Mr. William E. Colby, has since stated that "The Agency's assessments in the late 1960's were based in substantial measure on Mr. Adam's work."

Since my resignation, I have written a number of articles highly critical of the CIA. The most recent appeared in the May 1975 edition of Harpers magazine. Commenting on the article, Mr. Colby declared on June 4, 1975 that the charges it contained "go to the very heart of the intelligence profession."¹

My testimony today deals with the Vietcong Tet offensive which caught the American intelligence community largely by surprise. In the last few days, I understand, you have heard of other instances in which the U.S. Government was taken aback by events in foreign lands. These surprises, however, differ from our astonishment at Tet in one key respect. Whereas they arose from such factors as negligence, or a misreading of evidence, the Tet surprise stemmed in large measure from corruption in the intelligence process. In the months before the offensive, U.S. intelligence had deliberately downgraded the strength of the enemy army in order to portray the Vietcong as weaker than they actually were. Although our aim was to fool the American press, the public and the Congress, we in intelligence succeeded best in fooling ourselves.

What was the nature of the surprise at Tet? President Johnson—whose resignation the offensive caused—put his finger on it in his book, "the Vantage Point." "We knew a show of strength was coming," he wrote (on page 384): "it was more massive than we anticipated." It is my belief, and I think the evidence shows, that American intelligence has so denigrated the Vietcong's capabilities that we simply could not have predicted the size of the Tet attack. You will remember that the offensive hit not only Saigon and the American Embassy, but 40 out of 44 province capitals, and over a hundred district seats.

The story begins in the second half of 1966. During that period, I discovered at CIA headquarters a series of documents which suggested that the strength of the Communist forces in Vietnam—then officially carried at just under 300,000—was more likely double, or close to 600,000. In the following months, American intelligence (including Westmoreland's Order of Battle Section, whose job it was to keep track of the various categories of the Vietcong forces) looked the documents over and concluded that my findings about numbers had a good deal of validity.

By mid-1967, the documentary evidence for higher numbers was so massive that there was no longer any question that the enemy army was much bigger than we thought. The CIA's position at this point was that we should increase the enemy strength estimate to reflect the evidence.

Fearing the public reaction to higher numbers, however, Westmoreland's command was lobbying to keep the estimate at its official levels—that is, below 300,000. And in July 1967, the command began to argue that certain categories of Vietcong (who had been in the estimate since 1962) should be dropped. Furthermore, they began to sharply "scale down"—this was their own wording—the number of VC soldiers in certain types of units in the official Order of Battle.

I would like now to begin quoting telegrams and memoranda which illustrate my assertions.

The first is "Secret, Eyes Only" cable sent from General Abrams in Saigon to General Wheeler (head of the Joint Chiefs of Staff) on August 20, 1967. It indicated the newly-found higher numbers were "in sharp contrast to the current overall strength figure of about 299,000 given to the press here." He thereupon

¹ This article was cleared by the CIA.

suggested dropping two categories of VC from the strength estimate in order to keep it at its old level. The main reason for this, he indicated, was "press reaction." He went on. "We have been projecting an image of success over the recent months * * *" he stated, and (if we allow the higher numbers to become public), "all available caveats and explanations will not prevent the press from drawing an erroneous and gloomy conclusion. * * * All those who have an incorrect view of the war will be reinforced and the task will be more difficult." General Westmoreland later signed off on the cable and it was sent to the CIA's then-Director Richard Helms. It received wide distribution within the Agency.

Twenty days later, an intelligence conference convened in Saigon to hash out the enemy numbers. The conference, which included representatives from Westmoreland's command, from CIA, DIA, and State Department Intelligence, concluded with the CIA caving in and signing an "agreement" which kept the enemy force estimate at its old size. (I described the conference, which I attended, in my Harpers piece.) The "agreement" dropped the two categories from the estimate which General Abrams had suggested on August 20, and accepted the military's "scaled down" numbers. After the conference was over, Westmoreland's public relations staff drafted a briefing for the press on the new Order of Battle. The draft was sent to Washington for review.

The draft briefing was so blatantly misleading that it made some CIA officials question the wisdom of having caved in to the military's numbers at Saigon. I quote now from comments on the draft by a CIA official, Mr. Paul V. Walsh, of the Deputy Directorate of Intelligence. "As seen from this office," wrote Mr. Walsh on October 11, 1967, "I must rank (the briefing) as one of the greatest snow jobs since Potemkin constructed his village." It was so bad, he concluded, that it "gives us all the justification we need to go straight again."

A few days later, however, it was evident that Mr. Walsh had changed his mind about going straight. On October 23, 1967 he wrote "We feel that the Order of Battle figures generally understate the strength of enemy forces but recognize the apparent obligation for the estimate to be consistent with the figures agreed to at Saigon." Shortly thereafter, I was retired as the CIA's chief estimator of VC numbers and the job was put under the supervision of Mr. Walsh.

Five days after the second Walsh memo, Ambassador Bunker forwarded his views on the matter from Saigon in a "Secret" cable to the White House ("Eyes Only Rostow," dated October 28, 1967). He stated "I understand that the Department of Defense has approved a draft press briefing on the new VC/NVA order of battle picture and sent it to the White House for final approval. One aspect of it still bothers General Westmoreland * * * and myself. Given the overriding need to demonstrate progress in grinding down the enemy, it is essential that we do not drag too many red herrings across the trail." He went on to say that to admit to the press that they had dropped certain categories "from the Order of Battle seems to be simply to invite trouble. We may end up with stories that enemy strength is greater rather than less. Far better in our view is to deal with the matter orally if it arises * * * (in the hopes of) forestalling many confusing and undesirable questions." He concludes by saying "Sorry to badger you about this, but the credibility gap is such that we don't want to end up conveying the opposite of what we intend."

Two weeks later the press briefings began. On November 11, 1967, Westmoreland's command in Saigon told the press that Vietcong/NVA strength had actually declined (to 242,000) and that the decline was due to heavy casualties and plummeting morale. No mention was made of the categories dropped from the estimate. (See the New York Times account which appeared the next day.) At a press conference Westmoreland held on November 22, the same figures were put forward. The New York Daily News headlined it as "The Enemy is Running Out of Men." And then at a third one on November 24—it was finally admitted that the two categories had disappeared. But by this time, the press was so thoroughly confused with conflicting stories that the disappearance went unnoticed. On the same day, Mr. George Allen, Deputy Assistant for Vietnamese Affairs to the Director, Mr. Helms, wrote that Westmoreland's numbers were "contrived" and "phony" and that his estimates were "controlled by a desire to stay under 300,000."

Three days later, on November 27, 1967, the CIA station sent from Saigon a most remarkable memorandum. In effect, it predicted the Tet offensive. Written by a team of analysts named Joseph Hovey, Bobby Layton, and James Ogle, it stated that the Vietcong were planning "a political and military offensive utilizing all VC assets" and that the offensive was to include military attacks on "all major cities" in South Vietnam. On December 14, 1967, I was asked to comment on

the memorandum. The only flaw I could find in it was that it used the official Order of Battle figures which had been agreed to at Saigon. My comments included the following:

The Vietcong main battle forces are "considerably larger than we give them credit for. The Order of Battle omits a myriad of small, but elite units; it frequently underestimates the size of units it does carry; it does not take into account many North Vietnamese soldiers who are already in the South." The comments went on to say that the number of service troops agreed to at Saigon was "fraudulently" low, and the official number of "guerrillas" was shy by at least 40,000. Furthermore, it stated, the official estimates omitted "100,000 Self-Defense militiamen" (one of the categories dropped from the estimate at Saigon), "tens of thousands" of Assault Youths, "scores of thousands" of such VC cadres as the Armed Public Security Police, "and goodness knows what else." The next day, on December 16, 1967, the memo which predicted Tet was forwarded to the White House. But it failed to mention that something might be awry with the official strength estimates. Likewise a few days earlier (on December 8, 1967) the CIA had sent to Secretary of Defense McNamara a memorandum which also used the official numbers agreed to in Saigon. That part of the memo which concerned Vietcong strength had been superintended by Mr. Walsh, the new overseer of numbers.

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Thank you, Gentlemen, for allowing me to present this testimony.

Chairman PIKE. Thank you, Mr. Adams.

Have you any questions, Mr. Giaino?

Mr. GIAIMO. If I hesitate a bit, Mr. Adams, it is from shock or dismay at the state of our intelligence services, as portrayed by you in your statement, and as I have heard before from information that has come to my attention as a Member of Congress.

Is it fair to say this is not an unusual situation which happened in Vietnam—that it seems to follow a pattern of our intelligence-gathering capabilities, whether in Vietnam or elsewhere in the world? Would you care to give us your opinion on that?

Mr. ADAMS. I hesitate to refer to other areas of the world because I was not so much involved in other areas.

Mr. GIAIMO. But your background would indicate that you are an expert in intelligence matters. It seems that your opinions and judgment would carry some weight, and we would benefit by them. You have spent a considerable period of your life in intelligence.

Mr. ADAMS. If I can confine myself to Vietnam mostly, with which I am thoroughly familiar: Yes, we were repeatedly surprised.

Mr. GIAIMO. Let's take it to the year 1975, to the beginning of this year, when the great breakdown took place in the South Vietnamese forces.

Did our intelligence perceive this in advance?

Mr. ADAMS. Of course I had resigned in May of 1973, but my conversations with friends I have had since then showed that it was expected that the South Vietnamese were going to take their lumps. But as to a collapse of the whole South Vietnamese Army and Government, no, this by and large was not predicted.

I might add that in February 1972, I wrote a memorandum which almost precisely predicted the way the South Vietnamese Army was going to collapse. It predicted, for example, that the 1st division up in the north was going to unravel. It predicted, for example, that Danang was going to collapse and, of all things, it even predicted Xuan Loc was going to hold out for a little bit.

The reason I was able to make a prediction like that was not out of any crystal balling but because there was a great deal of evidence for it. For example, there was evidence of an enormous amount of Vietcong penetration of the 1st division and of the city of Danang.

We knew, for example, that at one time the chief of staff of the 1st division had been a Vietcong agent, that a couple of regimental commanders had been Vietcong agents. We knew the chief of police in Danang City was a Vietcong agent. We knew the chief of operations of the special branch of Danang City was a Vietcong agent and so on and so forth.

Mr. GIAIMO. Can you tell us about the intelligence community in Danang at that time and the relationship of the American intelligence units with the South Vietnamese intelligence units and the translators and mimeographers that were used?

Mr. ADAMS. Yes, sir.

All phases of American intelligence in Vietnam were penetrated by Vietcong agents. As far as I know, they hadn't recruited any American spies in the sense they actually got an American CIA man or soldier to hand them documents. However, our intelligence was so intertwined with that of the Vietnamese that you couldn't get away from letting the Vietnamese know about it.

Now you mentioned the problem at Danang. For a long period of time there was this arrangement between the South Vietnamese and

ourselves. In Danang was the U.S. Marine Corps headquarters, 3d MAF it was called, and its intelligence component, G-2. Also in Danang was the G-2 of ARVN I Corps, the northernmost corps area. Obviously all our intelligence estimates were written in English and all their intelligence estimates were written in Vietnamese, and the things had to be translated. The problem was to get them back and forth. They sent them to a building and had the Vietnamese intelligence translated into English and the English intelligence translated into Vietnamese and had the things mimeographed and sent in every direction.

Among the directions they sent was to Vietcong headquarters, because the mimeograph operators and translators, the large numbers of people in that office were Vietcong agents. So American intelligence, in other words, as well as South Vietnamese intelligence, was highly penetrated by the Vietcong.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I would just like to point out at this stage that this committee is undertaking to conduct an overall investigation. It is not directed against one administration, certainly not against the present administration, as evidenced by our hearing this morning. The events that surrounded the Tet offensive—which was a terrible disaster and failure of intelligence—is one which doesn't affect this administration at all, having occurred in 1968, under an earlier administration. Notwithstanding that, our inquiries will involve other periods that do include the period since the 1972 election.

The thing that strikes me about this is the real significance of the numbers of the enemy—the Vietcong, the North Vietnamese, the other types of elements that were fighting against our forces and the South Vietnamese forces at the time of Tet in 1968. The military was making announcements all the time that in order to successfully fight a guerrilla war, to fight against guerrillas, you had to have a ratio of 10 to 1.

Your estimate, as I understand it, involved enemy forces in South Vietnam of around 600,000. Is that right?

Mr. ADAMS. That is correct; sir, yes.

Mr. McCLORY. So, in order to combat the 600,000, you have to have what—6 million men?

Mr. ADAMS. That could be a 10-to-1 ratio. As the war went on, we started using lower ratios. I think by the end of the war we said 3 to 1 would be OK.

Mr. McCLORY. We finally built up in 1968, I guess, to about 560,000 American troops over there, is that right?

Mr. ADAMS. Yes.

Mr. McCLORY. It strikes me this effort to keep the figures down was to keep us involved—but to keep us involved at a level which popular opinion in this Nation would seem to accept without suggesting that we needed maybe two or three times as many American forces.

Tell me this: You were involved in the post mortem following the Tet offensive, were you not?

Mr. ADAMS. No, sir; I wasn't.

Mr. McCLORY. Who was involved in the post mortem?

Mr. ADAMS. A very good question, sir.

A post mortem is an attempt by the intelligence community to assess what went wrong, how we screwed up or didn't screw up, depending on what happened.

The post mortem on Tet was assigned in the CIA to a man by the name of Richard Lehmann. Mr. Lehmann was at that time Deputy Assistant of the Office of Current Intelligence, or OCI as it was called.

Of course it was OCI that had failed, largely, to predict the size and mass of the Tet offensive.

Mr. McCLODY. In other words, we had the same people who had made the blunders and mistakes reviewing their own blunders and mistakes; is that right?

Mr. ADAMS. That is correct, sir; and Mr. Lehmann, in making his assessment of what went wrong, went to Vietnam, and there I understand he interviewed General Abrams, General Westmoreland and Ambassador Bunker—of course all of whom were mentioned in my statement—and then he came back and he failed to interview me.

Mr. McCLODY. Did you have a memorandum prepared and available at that time, with accurate statistics according to your research, which would have thrown light on why this occurred and why the miscalculation resulted in this disaster?

Mr. ADAMS. Yes, sir; I had a great many of them; stacks of them.

Mr. McCLODY. All your efforts to get these statistics and this information analyzed and made part of the review were just brushed aside?

Mr. ADAMS. Actually, I didn't try to get it made part of the post mortem because I wasn't even told the post mortem was going on. I didn't hear about it until later.

Mr. McCLODY. The Vietnam war was certainly a major war. When you were back here at CIA handling this analysis of the figures that were coming back from South Vietnam, how many people were involved in putting together this vital information and passing it on?

Mr. ADAMS. A great many people were involved. I don't quite understand your question.

Mr. McCLODY. In this job of gathering the information and compiling it and putting it together for the benefit of the Director of Central Intelligence, you were working alone, were you not?

Mr. ADAMS. As I say, I was the only analyst between September 1965 and November 1967—the only analyst in Washington working full time on Vietcong.

Mr. McCLODY. How much information were you expected to analyze and put together? The stack used to be about a foot high every day—an impossible job.

Mr. ADAMS. Certainly impossible for any one person to make any sense out of it. I had to go at certain things one at a time.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Thank you, Mr. Adams, for being here this morning. I would like to ask you this first. Perhaps one of the most shocking questions that literally leaps at one from the pages of your testimony is this: Do you know how many American soldiers were killed during the Tet offensive?

Mr. Adams. Not exactly, no, sir. It depends on how you define the Tet offensive.

Mr. DELLUMS. My figures say 10,000 American soldiers were killed during the Tet offensive.

Mr. ADAMS. That number was too high. I flipped out that one by mistake. However, in the first 3 weeks of the Tet offensive something over 2,000 Americans were killed, and by some definitions the Tet offensive lasted through August. There are a bunch of waves that kept coming on. There were 7,000 or 8,000 Americans killed. An awful lot of people.

Mr. DELLUMS. Would you say that 7,000 or 8,000 American soldiers were killed as a result of the ineptness, falsification, and lies on the part of our intelligence community—namely, the DIA and the CIA, who falsified data with respect to the strength of the North Vietnamese forces?

Mr. ADAMS. I think that may be putting it a little strong because, after all, it wasn't the intelligence estimators who were shooting these guys—it was the Vietcong.

Mr. DELLUMS. Let me put the question another way: Did we lose many of these young men because the projections of enemy strength were purposely miscalculated, and based upon those false figures we overestimated our own capacity?

Mr. ADAMS. Yes, sir; I definitely think we lost a great many men unnecessarily because we were unprepared for the Tet offensive.

Again I would point out the incredible loss of 1,200 American airplanes, not to speak, obviously, of the more important things—the lives. These airplanes, 90 percent of them probably could have been saved if they had put mounds of dirt around them.

Mr. DELLUMS. Could 90 percent of the lives have been saved?

Mr. ADAMS. I would hesitate to hang a percentage on it. Certainly a lot of lives could have been.

Mr. DELLUMS. Certainly it is no joke that 7,000 or 8,000 American people did die because of the problem you laid out very specifically in several pages of testimony?

Mr. ADAMS. Indirectly, certainly some of these people were killed because of the ineptness of American intelligence; yes, sir.

Mr. DELLUMS. I would like to ask three questions following the line of questioning started by Mr. Giaimo.

After Tet, you looked at the number of VC agents in the South Vietnamese Army and Government. In that process, did you determine the extent and quality of previous CIA, or DIA collection and analysis of information on this matter, and if so, what had been done?

Mr. ADAMS. Yes, sir; I did.

Starting in approximately January 1969 and thereabouts, I began to conduct a study with a friend of mine by the name of Robert Klein (no longer with the Agency), about the size of the Vietcong agent structure—that is, how many spies they had in Allied ranks. I had come to the conclusion by mid-1969 that the number of VC agents there were in the South Vietnamese Government and Army was approximately 30,000, which is the biggest espionage network in the history of mankind.

One of the problems with my discovery was that no one had looked at the problem before. I was the first person ever to attempt to count spies or even to estimate the size of the problem.

I mentioned, for example, in my Harper's piece that the chief of station in Saigon had said almost at the same time that there were only 300 agents. He just hadn't looked at the problem. It was a number

he flipped off the top of his head. That would make him 10,000 percent wrong.

I started trying to find what we knew about these agents.

In July 1969, right after I had made this estimate, I came across this series of captured documents out of the Vietcong province of Bien Tre, which is the same one as the South Vietnamese Government province, then, of Kien Hoa. These documents, maybe a couple inches high, mentioned there were at least 500 VC agents in Kien Hoa.

So I sent a cable to the CIA station asking this: Would you please go down to our representative in Kien Hoa and ask him what he knows about any agents.

I got a reply sometime later. It turned out that our man in Kien Hoa was unaware of the number of agents, he had never even seen these documents, because they weren't forwarded to him. He was not aware, in other words, of documents in his own province which mentioned there were 500 agents. Kien Hoa is about the size of Rhode Island, I guess. I don't know. It's a small place.

I repeatedly found things like this. The problem just hadn't been looked into.

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Adams, in your testimony you have indicated there were some 30,000 Vietcong agents. How did you or your intelligence arrive at this figure?

Mr. ADAMS. I don't mean to say we had any precise calculation but this is more or less how we went about it: My friend got a stack of documents, I got a stack of documents, and we just went through them—in fact, every captured document that had ever been taken and translated. And I think eventually we got references to some 2,000 agents.

Now, this was a sample. In other words, you had 500 agents in Kien Hoa, which I already mentioned. And we knew there were several in Danang.

Mr. MURPHY. What years are we talking about?

Mr. ADAMS. This was approximately 1969. The 1969 period.

Mr. MURPHY. How many agents would you say we had operating within the Vietcong?

Mr. ADAMS. At the start of the Tet offensive we had one in Vietcong ranks that I know about.

Mr. MURPHY. What effect, if any, did he have?

Mr. ADAMS. Well, there is actually an interesting story that goes along with this agent.

Chairman PIKE. Let me interrupt, now, just to ask a question: We are not in any manner going to endanger this man if he is still alive, are we?

Mr. ADAMS. No, sir. He is dead.

Chairman PIKE. Thank you.

Mr. ADAMS. That is a part of the story.

Mr. MURPHY. Is it my time, Mr. Chairman?

Chairman PIKE. I apologize. You will have extra time.

Mr. MURPHY. Since he is dead, would you tell us the details and what, if any, effectiveness he had?

Mr. ADAMS. This agent was run through a number of cutouts by a delightful American case officer up in Danang whose name I won't mention even though he is retired. This guy looked, talked and acted like W. C. Fields. He always wore a white suit so the Vietcong would know who to go to if they wanted to become a spy.

At any rate, this agent handed in, in essence, the plans for the Tet attack on Danang. This fellow handed these reports to the Marines in Danang, and he also sent a copy to the CIA station in Saigon. The station in Saigon—and I hope I have my story right; I have heard it a number of times—the station in Saigon didn't pay any attention to it and didn't forward it to Washington.

The Marines, however, did pay attention to it, and they deployed the Marine forces in Danang in such a way that in fact Danang was one of the cities that the Tet attack was virtually beaten off. They just poured lead and gunfire on the approaching VC, and unfortunately also killed the agent in the process. So we were back down to zero after Tet. So the score became 30,000 to nothing.

Mr. MURPHY. Did we improve those odds at all later on?

Mr. ADAMS. Yes, sir.

Mr. MURPHY. Without going into detail.

Mr. ADAMS. Without going into detail, we got I think upward of—agents—almost up to two digits. Low two digits. Of course, the Vietcong also recruited several thousand more.

Mr. MURPHY. There is some question about a platoon of ours in action in Laos that the enemy knew about?

Mr. ADAMS. I believe you are referring to a South Vietnamese operation into Laos in, I believe it was, February 1971. The name of the operation was Lamson 719. It was a large-scale South Vietnamese operation from northern South Vietnam intended to go into Laos in order to cut the Ho Chi Minh Trail.

Now, this was supposed to be a highly secret operation. However, evidence I found later showed that the Vietcong were getting the initial operation plans for this operation, that kicked off in February 1971, in November of 1970. That is, 3 months beforehand. They were getting copies of each change in the operations orders of the plan for Lamson 719.

By the time Lamson 719 was launched, in February 1971, the Vietcong were much more familiar with it than the South Vietnamese Army was because the VC had gotten so many copies of the plan. The South Vietnamese Army, of course, only gave their operational commander copies of Lamson 719 right before the invasion took place, whereas the VC had been reading the thing backward and forward for months.

In fact, it was such common knowledge that there was a captured document which I saw in January 1971 which indicated that the Vietcong high command was briefing its low-level VC soldiers about this South Vietnamese offensive, even down to platoon level. In other words, the average VC soldier knew about this offensive in January 1971, even though it wasn't launched until February 1971, the next month.

Mr. MURPHY. What was the result of that offensive? What happened?

Mr. ADAMS. The South Vietnamese were really clobbered.

Mr. MURPHY. Have you any statistics?

Mr. ADAMS. In that operation the Communists hit something in the neighborhood of 700 helicopters. Part of the reason was because they knew where the operation was going. So they stationed anti-aircraft guns all around the area. They realized, also, that we were going to use helicopters.

Mr. MURPHY. Our pilots were flying the helicopters?

Mr. ADAMS. Yes, sir.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

I am very interested in your comments on page 4 of your statement in which you talk about the conference convened in Saigon among various intelligence agencies, at which you state you were present. What other CIA representatives were present at that meeting?

Mr. ADAMS. As I said in my article in Harper's, the guy who ran the CIA delegation was a man by the name of Mr. George Carver.

Mr. TREEN. Was he present?

Mr. ADAMS. He was present at the meeting.

Mr. TREEN. Who was the top CIA official present at the Saigon meeting that you describe on page 4?

Mr. ADAMS. That was George Carver.

Mr. TREEN. And how many others? You were there, and how many other CIA representatives?

Mr. ADAMS. I was there, a person by the name of William Hyland was there (now head of the State Department intelligence); a man by the name of Dean Moor was there [spelling] M-o-o-r, without an "e" at the end. And there was one other fellow whom I forget.

Mr. TREEN. All right. Now you describe the result of that as a "caving-in" by the CIA. Did you participate in that "caving-in" yourself?

Mr. ADAMS. No, sir; I didn't participate in the caving in. I did in the sense that I was part of the CIA delegation. I was complaining repeatedly that we shouldn't have caved in.

Mr. TREEN. To Mr. Walsh, or to whom did you make your complaints?

Mr. ADAMS. I complained to George Carver, William Hyland, and Dean Moor. I complained to Paul Walsh.

Mr. TREEN. Can I interrupt to ask was this verbal, or was some in writing?

Mr. ADAMS. Some of the complaints were in writing, sir. Specifically, on November 7, 1967, I wrote a nine-page memorandum. I believe it was on the 7th. It might have been the 9th. I wrote a nine-page memorandum complaining at length about what had gone on in the Saigon conference, and I handed it in to the Director's office, of course, of which I was a part. In fact, I threw it around like confetti.

Mr. TREEN. Do you have that document—a copy of it?

Mr. ADAMS. No, sir; I have not. Representative McCloskey has a copy. He sent it to the CIA with a request that it be released. It has not yet been released.

Mr. TREEN. Mr. Adams, on page 2 of your statement, you make a very serious charge. Actually beginning on page 1, where you talk about corruption in the intelligence process, and then you state, "Although our aim was to fool the American press, the public and the Congress," et cetera.

You are stating that the aim was to fool the public, the Congress and the American press. Whose policy was this? Who developed this policy? On what basis do you say that was the aim?

Mr. ADAMS. Now, I will have to start from the top and work down. I presume you are asking whether Mr. Johnson might have been responsible. I don't know.

Mr. TREEN. I am not pointing a finger. I am trying to determine who developed this policy, and my follow-on would be to what level did the information get—information or judgments such as you make? We have your testimony that Mr. Rostow, at the White House, got one communication. If you have information as to whether or not that got to the President of the United States, I would like to know that. I am interested in who developed this policy—the aim of which was to fool the American public—and then I want to know what information got to the top level insofar as you know.

Mr. ADAMS. Well, of course, sir, you have to realize I was not a very high-level official, so I was not privy to the goings on in the White House.

Mr. TREEN. But you say the aim was to fool the American public, and I want you to elaborate on that.

Mr. ADAMS. OK. As to who elaborated this policy, I would have to read through my statement. I mention certainly General Abrams, who wrote that cable. General Wheeler was aware of it, apparently, since he got a copy. General Westmoreland signed off on it. Mr. Helms got a copy.

Mr. TREEN. Do you know if Secretary McNamara was privy to any of these communications?

Mr. ADAMS. I would find it difficult to believe that he wasn't. I don't know. I am just telling you what I do know. Ambassador Bunker, of course, wrote that thing on October 28. It was to Rostow, so all I can say is Abrams, Wheeler, Westmoreland, Helms, Bunker, and Rostow knew there was some kind of attempt going on to fool the press.

Chairman PIKE. The time of the gentleman has expired. Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Adams, if I were to boil down our testimony into a summary to be applied to intelligence principles, would it be fair to state that our intelligence efforts prior to the Vietnam Tet offensive were not primarily concerned with logical gathering of intelligence data, analyzing it, and developing rational conclusions, but rather the main effort was directed toward establishing a political and public relations position that the command wanted to present to the higher levels of Government and to the American people?

Is that a fair summary of what you have been trying to tell us?

Mr. ADAMS. Yes, sir.

Mr. MILFORD. Did you make any effort, yourself, to bypass either the Vietnam command or your own superiors to try to get this picture to a higher decisionmaking level of our Government?

Mr. ADAMS. Yes, sir, I did.

Mr. MILFORD. You mentioned the memo. That would be more through channels, but did you use any extracurricular, outside channel, activities?

Mr. ADAMS. In fact, I stayed more or less in channels. The first time I ever did some extracurricular activity was right after President Nixon had taken office, because I wanted to inform the new President, whoever it would be. I started trying to do this before, but always through channels. But once President Nixon came in, I attempted on the very first day, in fact, of his tenure at the White House to pass some documents to the incoming White House staff—obviously not directly to Mr. Nixon—through channels.

My effort to forward the documents through channels was turned down. Then what I did was take a wad of stuff and give it to a friend of mine in the White House by the name of John Court, on the White House staff, in the Executive Office Building. I understand it was passed around to various people on the National Security Council staff. So I did leave channels in that case; yes, sir.

Mr. MILFORD. In your first effort, who on Mr. Nixon's staff did you try to contact?

Mr. ADAMS. John Court was the guy's name. He wasn't really on Nixon's staff, but Kissinger's, in that he was a member of the National Security Council staff. He now works, I think, in a bank in Chicago.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. DELLUMS. Would the gentleman yield?

Mr. MILFORD. I would be glad to.

Mr. DELLUMS. I understand, Mr. Adams, that after looking into the Vietcong agent situation, you wrote a report. I would like very much if you would explain to this committee what happened to that report, including whether or not the CIA refused to give the content of your report to the White House.

Mr. ADAMS. Right. Yes, sir. I completed this report, which was some 70 pages long, written by myself and a man by the name of Robert Klein. I believe it was December 1, 1969.

I was told thereafter under no circumstances was I to let the report out of the building and certainly not to the White House. I was specifically told that—not to the White House.

Mr. MILFORD. Who told you not to give it to the White House?

Mr. ADAMS. A man by the name of Ronald Smith, passing on directives from unnamed people up in the staff of the Deputy Director of Intelligence. He wasn't doing it on his own hook. He got orders, but I don't know who from.

We had this draft study completed on December 1. Then we were told several times that it was unsatisfactory and to rewrite it.

Meanwhile, John Court, the same fellow who I had talked to on the White House staff, had gotten wind of the memo. Because I told him that the thing existed, and he kept asking for drafts of the memo from the CIA hierarchy. He was turned down every time.

He called me over and asked me if I could do anything to get a draft. I said I had been told not to give him one.

One day, February 10, 1970, Mr. Court came over to our office, and we had a whole stack, drafts of the memorandum, and Court, of the White House, came up to me, and said, "can I have it?" I told him he couldn't have it, that I had been told he couldn't have it. He said, "Can I take a look at it?" I said, "They didn't tell me anything about that, so you can take a look at it."

He went into the next room and started reading it and disappeared at the end of the day, and I found, to my mixed horror and delight,

that he had actually walked off with it. Shortly thereafter, I was given a letter of reprimand for releasing a document to an "outsider."

My colleague, Robert Klein, was taken off the job of working on espionage and transferred to something entirely different. He was even threatened with firing, on March 27, 1970, at 10 in the CIA cafeteria.

Later Mr. Court wrote up a precis of the memorandum, and sent it to Kissinger, and Kissinger apparently gave it to Mr. Nixon.

Mr. Nixon, I am told, blew his stack, and Mr. Kissinger sent a directive over to the CIA, telling them to get this memorandum out. Then, finally, some months later, it did go out and in more or less the state we had written it in the previous December.

So that is more or less the problems I had to go through.

Mr. MILFORD. Thank you.

Chairman PIKE. The time of the gentleman has expired. I see we have a vote on the floor, and this would be an appropriate time for the committee to take about a 15-minute recess.

[Recess taken for Members to vote.]

Chairman PIKE. The committee will come to order.

Mr. Kasten may question.

Mr. KASTEN. Thank you, Mr. Chairman.

In your testimony you stated that Paul V. Walsh, of the CIA—I am referring to pages 4 and 5—became the supervisor of estimates of VC numbers after you were relieved of duties in this connection. What has happened to Mr. Walsh's career at CIA since that time? What position does he hold now in CIA?

Mr. ADAMS. If my information is correct, he is now the Deputy Assistant Director of Intelligence; that is, Assistant Research Deputy.

Mr. KASTEN. Do you feel that the Agency tends to reward analysts and personnel who go along with the Agency's team view of a problem and penalize those who go against the grain?

In other words, he was one of the people in this cave-in part. Do you think that is a decision that is being made by the bureaucracy there?

Mr. ADAMS. I wouldn't say it is necessarily a conscious decision in that you reward bad guys and penalize good guys, and, of course, in many cases that wasn't the case.

I think, however, there has been a tendency toward that in many cases. For example—and I refer to my statement—a team of analysts named Joseph Hovey, Bobby Layton, and James Ogle provided the United States a most remarkable service by predicting an enormous offensive, and by doing it in good time—that is, 2 or 3 months ahead of time. James Ogle was subsequently fired. Joseph Hovey, who had really written that part of the memorandum which most predicted the Tet offensive, was transferred back to Washington and put under a person who had not predicted the Tet offensive; in fact, who had earlier made fun of Hovey's memorandum. Hovey subsequently quit, not so much in disgust, but in discouragement.

The third one, Bobby Layton, is in a midlevel job somewhere in the CIA, plugging away.

So here you have these people who really deserve intelligence medals—there are such things—and who didn't get anything out of their prediction.

However, you take Mr. Walsh, who was willing apparently to go along with an estimate even though he knew it was phony, but who

got up to a higher level. And probably the most remarkable one, did you mention General Graham?

Mr. KASTEN. I didn't in my listing.

Mr. ADAMS. Well, there is another example. He was apparently involved in a lot of the chicanery that went on in Westmoreland's headquarters, and he now runs the Defense Intelligence Agency. He is a lieutenant general. In those days he was lieutenant colonel.

Mr. KASTEN. In your opinion, this is a problem, and a concern?

Mr. ADAMS. Frankly, I think it is the biggest problem of all concerning intelligence at the present time.

Mr. KASTEN. Thank you. I want to change the questioning a little bit. Are you aware that an intelligence report to William F. Bundy 5 months before the Tet offensive contained materials for possible release to the American public, and this report cited enemy defections? For example, it declassified the fact that 11,000 defected in 1965, 20,000 in 1966, et cetera. However, this statement was followed by a comment that was classified. In other words, part of it was released, and part of it was classified. The classified part said that the rate or increase of defections may well be below that of 1966, and in addition stated that the vast majority of these defectors were soft-core, low-level personnel.

My question is whether this kind of deception, this kind of classification procedures, and it relates to Mr. Treen's questions earlier about an effort to deceive the American public, the press and even the Congress—was this kind of deception typical of our Vietnam intelligence?

Mr. ADAMS. Yes, sir, it was. We intelligence had a constant eye toward what the press might think, and, unfortunately, all too often it colored our judgments.

Mr. KASTEN. The same report went on to suggest, for public unclassified consumption, that there was a "continuing increase in the number of enemy captured on the battlefield," but again it was followed by a classified comment that Bundy should have avoided statistics since they might conflict with what we're saying about prisoners of war and in any event that the captures included relatively few hard-core or even middle-echelon personnel.

Here is another example of this, and I am out of time, but I have a number of other examples of this.

Is this typical of just the Vietnamese efforts in intelligence, or do you think this would expand out to other intelligence-gathering efforts in terms of using classified and unclassified materials?

Mr. ADAMS. I think it is far more typical of Vietnam than it has been in other situations. The Vietnam problem, I think, was that we were losing the war. And how do you encourage the folks back home in a situation like that? So in a losing war, I think, there is an enormously greater tendency to fudge the facts than in other situations. For example, in 1964 I worked on the Congo, and as far as I can tell, there was no attempt to color judgments with an eye to the press, perhaps because nobody really cared about the Congo.

Mr. KASTEN. Mr. Chairman, my questioning is concluded.

Chairman PIKE. The time of the gentleman has expired.

Mr. KASTEN. I would like to make a unanimous consent request.

Chairman PIKE. The gentleman will state it.

Mr. KASTEN. This report I was referring to goes on through eight more paragraphs and is included in some of our documents, and I would hope at some time the committee would take the appropriate steps to release this document with the classified and unclassified sections to the American public and the Members of Congress, so we can see how at least in this case we were misled about the progress of the Vietnam war by these tactics of classification.

Chairman PIKE. I can assure you that the Chair is wholly willing to cooperate with you in this matter.

Mr. KASTEN. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Adams, we have it that Bunker, Wheeler, Rostow, Adams, and Westmoreland knew——

Mr. ADAMS. Yes.

Mr. JOHNSON [continuing]. Knew of this attempt to mislead the press and the public.

The American forces were actually placed on the alert, though, before the attack, weren't they?

Mr. ADAMS. Now here my exact knowledge is not as good as it might be. I know that certain forces were placed on alert. Now whether they put it all on red alert and had everybody crouching in the trenches——

Mr. JOHNSON. You can't say.

Mr. ADAMS. I can't say. I know that it wasn't a full alert. There was some kind of an alert; yes.

Mr. JOHNSON. Do you know whether or not Mr. Helms knew of this attempt to deceive the press and the public as to the number of personnel on the other side?

Mr. ADAMS. He must have, if he read his mail.

Mr. JOHNSON. It was in the mail, but you can't say of your own personal knowledge?

Mr. ADAMS. I never saw the man read his mail and remark on it.

Mr. JOHNSON. He never did remark on it to you? What I am trying to find out is where did this come from? I have my own ideas—as to why these people were engaging in this kind of activity—but we must ultimately place the responsibility on the intelligence community, the military, or the White House.

Now, this was essentially a political decision?

Mr. ADAMS. Right.

Mr. JOHNSON. In the light of history, the people you have named so far will all be regarded as incompetents if it turns out that they disregarded this information. Generally speaking, if you have evidence that you have 600,000 enemies opposing you, and you claim 300,000, that seems to be very inconsistent.

Generally, the military tends to overestimate their opposition and problems, don't they? Why would people disregard this kind of evidence if they weren't doing it on the basis of orders that they had received from higher authority? This is what I am trying to find out. This cable from Bunker went to Rostow?

Mr. ADAMS. Yes, sir.

Mr. JOHNSON. It was a recommendation, wasn't it?

Mr. ADAMS. Yes, sir.

Mr. JOHNSON. So evidently all of this deception originated in the White House, and these people were not engaged in a conspiracy of their own making but were following orders; isn't that the inevitable conclusion one has to draw from this? Is this a breakdown of intelligence? Is the intelligence community that incompetent, or were they following orders? Is the military that incompetent, or were they following orders?

This is what we ultimately have to decide.

Mr. ADAMS. A superb question. That is the basic question. I can only say I don't know the answer. But I can make surmises. For example, when you have Bunker sending a cable "Eyes Only Rostow," and Rostow is one slot from the top, the top might have known, too.

I would, however, relate an anecdote I heard, and it is really only that. But it was from a very good source, and it concerned a briefing given to Westmoreland in May 1967, on the findings by his intelligence that there were twice as many enemy soldiers as were carried in the official books.

The man giving the briefing was the head of the order of battle section of Westmoreland's command. And this is more or less how it went. This man giving the briefing had a briefing board with a flip chart, and he went over the categories in the order of battle, one by one.

He said to the general, according to my information, "General, we have the main and local forces of the Vietcong, who amount to 118,000. On these, we think we are more or less right." And he flipped the chart. He said, "The next category, sir, is the guerrilla militia, or local defense troops," and he said: "The official order of battle carries them at, I believe, 112,760, but we believe that the real number is closer to 200,000." And my source told me Westmoreland almost fell off his chair.

The briefer said, "The next category, sir, is the political category, which the official order of battle carries at 39,175. We now think this category is more like 90,000. Finally, the last category, the service troops, is carried officially at 18,553, sir." And then he said, "We haven't really done research on that, but it might be double, triple, or quadruple the official estimate." He said General Westmoreland was sitting in his chair practically with his jaw slack, with almost sort of a catatonic look, looking into the far distance.

Mr. JOHNSON. My time has expired. But I want to get the date of this.

Mr. ADAMS. This was approximately May 1967.

Mr. JOHNSON. Now continue.

Mr. ADAMS. OK. Approximately May 1967, and then he said finally General Westmoreland got back to his usual straight position, square jaw, and so forth, but was still very much shaken. And Westmoreland started saying to himself, "What am I going to tell the press; what am I going to tell Congress; what am I going to tell the President?" And then he squared himself even further up in his chair and said, "Gentlemen, I want you to take another look at those numbers."

I was told this by the officer who gave the briefing. Now that indicates to me, assuming that I have the story straight, and this is second hand—that indicates to me at least at that point in time it

was Westmoreland who was beginning to think about fudging the numbers.

Now, that doesn't explain about this "Eyes Only Rostow" business.

I can't give you an answer, sir. I have made some of the same surmises that you may have, but I am afraid that I can't go beyond the evidence.

Chairman PIKE. The time of the gentleman has expired. Mr. Field?

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Adams, I would like to review the U.S. intelligence efforts in Vietnam, specifically with respect to the Tet offensive, but generally with respect to the entire war.

You may be interested in our review of the information which we did obtain prior to being cut off. Without getting to specifics on it, we have seen the President's daily briefings in the period right before the war. He was not informed of anything approaching the Tet offensive.

We also have learned that the South Vietnamese Army had 50-percent leave at the time of the Tet offensive. In other words, 50 percent of the army was at home or on vacation, or whatever they do on leave. It would be a pretty strong indication that the Tet offensive was not predicted.

Now, the intelligence community is fond of citing some fine lines by saying some sort of offensive was predicted. Would it be fair to say that the key to the Tet offensive was not whether or not there was going to be an offensive sometime around the first part of the year—because that had become an annual event—but rather the intensity of this offensive, the timing of it, the scope of it, and the fact that it would include attacks on the inner cities of Vietnam? Is that a fair characterization of the key to the Tet offensive?

Mr. ADAMS. Yes; I think I would maybe draw it a little bit more precisely than that. I think we weren't all that bad on the timing. I think we knew within a few days of when the thing was going to come off.

You are right about the fact that we weren't expecting it to hit the cities.

Mr. FIELD. Let's be specific. Did anybody predict the scope, the intensity, the timing, and the focus of that attack?

Mr. ADAMS. I don't think that anybody did; no. The closest thing that came to it was the Hovey memorandum of November 27.

Mr. FIELD. And one of the reasons that you cited this morning is the deliberate distortion of numbers, intelligence, that kind of thing.

I would not like to go through some people who were involved in this. In addition to yourself, you have mentioned Joseph Hovey, Bobby Layton, and James Ogle. These were people who apparently did not participate in deliberate distortion of our intelligence. And you have indicated they did not fare particularly well by this—that their careers have not exactly skyrocketed; that if anything, in fact, they have had to leave the Agency, or if they stayed they certainly weren't promoted.

What about Lieutenant Colonel Graham?

Mr. ADAMS. Lieutenant Colonel Graham's career has skyrocketed.

Mr. FIELD. Did he participate in this deliberate distortion of any kind of intelligence?

Mr. ADAMS. I can't really say directly, because I have no direct knowledge of then lieutenant colonel, now Lieutenant General Graham, participating directly in a distortion of evidence.

However, I can tell you indirect stories, and here is one which I would advance as circumstantial evidence that maybe General Graham knew.

In February 1968—that is right after the Tet offensive—a young lieutenant by the name of Richard McArthur, who was the lieutenant in charge of the guerrilla component, went off to Bangkok from South Vietnam or disappeared for some reason, on R. & R. and returned and discovered the category of the order of battle of which he was charged, the guerrillas, had dropped from 80,000 to 40,000, approximately by half.

Since he was the analyst most familiar with the evidence on guerrillas he was astonished and amazed that without his say-so the guerrilla number had dropped from 80 to 40. He went in to his bosses, one a man by the name of Lt. Col. Paul Weiler [spelling] W-e-i-l-e-r, who was then the head of Westmoreland's order of battle section. The other, a Commander Meecham, U.S. Navy, was Weiler's deputy. And he said to these gentlemen, "what the hell is going on here? Why has this dropped from 80 to 40?"

And one of them, I am not sure which, said, "We have got to do it. We have to get this number down." And McArthur said, "Well, there is no evidence that the number should go down." They said, "Well, we are just going to leave that number down where it is." He said, "Well, I damn well think it shouldn't be that low."

And then one of them said to him, "Lie a little, Mac; lie a little." Those are words that I got from McArthur: "Lie a little, Mac; lie a little."

McArthur said words to the effect that he wouldn't "lie a little." And he was transferred to the 195th MI detachment on the outskirts of Saigon shortly thereafter.

Then 2 months later, in April 1968, Colonel Weiler and Commander Meecham showed up at a conference at CIA headquarters to argue for the lower number. Their boss at this conference was then Col. Danny O. Graham, now head of the Defense Intelligence Agency.

Now, I have no direct evidence that General Graham ordered them to order McArthur to lie a little, but I feel this might be the case. I have met this guy Weiler, and he is a perfectly straightforward Marine Corps colonel, not the kind of person who would make up an order like that all by himself, in my opinion. So I think at least there is reason to believe that Colonel Graham, now Lieutenant-General Graham, knew what was going on.

Chairman PIKE. It is the intention of the Chair to go around at least one more time. I didn't ask any questions, Mr. Adams, at the beginning of this session, because I find your statement absolutely devastating all by itself.

We count on our intelligence in America to provide us with objective information whereby rational decisions can be made. In this instance it seems to me political decisions were made after which the intelligence was shaped to fit the decisions which had already been made. Is that a fair characterization of what happened?

Mr. ADAMS. Yes, sir.

Chairman PIKE. And this is really what you mean when you refer to a corruption of the system—that the intelligence was intentionally made inaccurate to comply with or to conform to political decisions which had already been made?

Mr. ADAMS. That is correct, sir.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Adams, in the opening portion of your statement you said that for 7 of the 10 years of your employment with the CIA you were the Agency's principal analyst on Vietcong and for 2 of those years, during the Tet offensive, you were the only analyst at CIA headquarters studying the VC full time.

You then testified, in response to a question from one of the committee members, that this involved at the very least a stack—I think you indicated about a foot high—of material that you had to go through every day. Is that correct?

Mr. ADAMS. I might be exaggerating it a little on the foot, but it looked like that. It was pretty high; it was a lot of stuff.

Mr. GIAIMO. Something less than a foot?

Mr. ADAMS. Yes, sir.

Mr. GIAIMO. My point is that with all of the employees at CIA—and this is at Langley here—I assume you were the only one to do that job? You were in Washington at that time, not Vietnam?

Mr. ADAMS. I went back and forth, but most of the work I did was at Langley; yes, sir.

Mr. GIAIMO. Vietnam at that time played a major role in occupying the activities of the CIA intelligence-wise, did it not?

Mr. ADAMS. Yes, sir, an enormous amount of time.

Mr. GIAIMO. Can I assume that, if you were the only analyst involved in Vietnam activities or Vietcong activities, the analysts who were concerned with other activities in other countries in other parts of the world were equally shortstaffed?

Mr. ADAMS. There were some other cases of that.

Mr. GIAIMO. Let me tell you the picture I am trying to get of the situation. It is my impression, from listening to your testimony and from other testimony, that the CIA is shortstaffed in intelligence-analyzing activity and overstaffed in some other types of activities—principally covert operations or dirty tricks. Is my impression right or wrong?

Mr. ADAMS. Your impression has a good deal of validity, certainly concerning Vietnam. I hesitate to talk about other areas. In Vietnam—I don't think I am revealing any big secret by saying that there were several hundred CIA employees in Vietnam whose job it was to collect intelligence or to act covertly or something like that, and that there were several hundred more, or thousands more, in the military intelligence. And their stuff was coming in in floods, and I was the only guy in Washington working on the Vietcong full time. There were others working on Vietnam, of course, but not on the VC full time.

I am not necessarily saying that there were too many intelligence people in Vietnam, but that there should have been a lot more on my end. And I am not necessarily recommending that we hire a whole batch of new analysts, but that we should rationalize what we have.

You had, for example, large numbers of people analyzing the Ho Chi Minh Trail back in headquarters, which is all well and good, but they weren't working on our principal enemy, the VC.

I hesitate to make a comment on whether I think we have too many spooks.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Adams, first question: Did you ever attempt to report your findings and the problems that you encountered at the Agency to any Member of Congress, and, if so, would you go into some detail about that contact?

Mr. ADAMS. Yes. I attempted to do so in October, November, and December 1972. The first person I contacted, and to whom I handed a 13-page memo, was on your committee, Mr. Lucien Nedzi. This was on approximately the 14th of October 1972. He read the thing and said it was quite interesting. His staff assistant by the name of James Pyrros also said it was. It covered many of the things I'm talking about now. But Mr. Nedzi said he was terribly busy with elections at the time, as all the Congressmen were. He had a busing problem up in Michigan which he was particularly sweating, he said. Apparently it was a real hot issue up there, and he started talking about that, and he said, "Get hold of me after elections." And I said, "Yes, sir, I will."

And I called him then, I think, on something like—I forget the exact date. It was a week or two after elections. I got hold of his assistant, James Pyrros, who said, in essence, "We find your stuff very interesting. We will give you a call if we do something about it."

Mr. DELLUMS. Was anything every done about it?

Mr. ADAMS. Not to my knowledge.

Mr. DELLUMS. You say this information was given Mr. Nedzi in 1972?

Mr. ADAMS. Yes, sir. I believe it was October 14, 1972.

I also made an attempt over in the Senate. I went there to the Senate Armed Services Committee, and talked to a man named James Woolsey, who is on the staff over there. In fact, I talked to Mr. Woolsey on three or four occasions, anyway. He said he doubted they could do anything about it. He said among other things, the Subcommittee on Intelligence—I am not sure I have this right, but I believe it was then run by Senator Symington—hadn't met for a year and a half, and he didn't think they could do anything about my problems. So nothing happened there.

Then I talked to a gentleman who was a staff assistant in House Appropriations, whose name was—I forget—and nothing came of that either.

Mr. DELLUMS. Let me turn to another line of questioning. One of our responsibilities is to provide a report to Congress with recommendations on how we should address the significant problems we have begun to identify, both in the House and Senate Select Committees on Intelligence.

As I read your testimony, you are saying the Defense Intelligence Agency and the Central Intelligence Agency knowingly and purposely developed intelligence to fight preconceived policies; is that correct?

Mr. ADAMS. Yes, sir, that is right.

Mr. DELLUMS. In that vein, do you believe it is systematically built into the Defense Intelligence Agency system that they are a nondiscerning service, or handmaidens of the policy of the military service, to that degree rendering them impotent and ineffectual?

Mr. ADAMS. I think your language is somewhat stronger than I would use. I generally agree with the thrust of it.

The problem in the DIA—I am not sure exactly how the command lines go—but the problem is that the DIA is organizationally under the military. For that reason the DIA estimates have always invariably in some way been tilted—you put it as a handmaiden—

Mr. DELLUMS. Rendering a nondiscerning service?

Mr. ADAMS. There is much more a tendency to distort at DIA than at the CIA. The CIA's estimates are usually more objective than those of DIA.

Mr. DELLUMS. This committee has already gone into the problems of coordination and proliferation with respect to the October 1973 Mideast war. It brought about very serious problems. I notice the Tet offensive post mortem cites coordination and amplification of thousands of intelligence documents each day as a contributing factor for total failure of the intelligence community.

Can you comment on the problem of multiple intelligence authorities, each with their own special interest, somehow trying vainly to produce a unified intelligence picture during the Vietnam war? I hope you would cite a study where 13 different intelligence agencies were all congregated in one small Vietnamese town.

Mr. ADAMS. It was an enormous problem in Vietnam, because there was so much stuff coming in, and so many people involved.

The study to which you refer—I hope I have my facts more or less right—was written, I believe, by a man named Richard Holbrook, or a name like that, and it concerned the district of Cu Chi, which is right outside of Saigon. It was a very interesting study because it showed there were no less than 13 competing intelligence units in Cu Chi.

Mr. DELLUMS. Somewhere along the way would you define "competing"? That sounds interesting.

Mr. GIAIMO [presiding]. I will advise the gentleman that his time has expired, but I will let him complete the statement. It sounds like it is going to be a very long one and we will have to shorten it a bit. There are other members waiting for time.

Mr. ADAMS. The study in essence came to the conclusion that there were 13 different competing bureaucracies in this little area, and that very often they all ended up recruiting the same agent. So you had this very lucrative business going on, of the agent getting dough from 13 different sources. It was great if he could do it. It was certainly an intelligence problem.

Mr. GIAIMO. The time of the gentleman has expired.

The gentleman from Illinois is recognized.

Mr. McCLORY. In case I neglect to do it later, I want to say how grateful I am as a member of this committee for your appearance here today and for the information you have provided, through testimony and otherwise; and for the assistance you are giving us in this extremely important job of trying to ferret out the defects in our intelligence system and make a better intelligence community for our country.

Mr. ADAMS. Thank you, sir.

Mr. McCLORY. I note in your article in Harper's magazine that you also make reference to a conference in September 1967, at which Col. Danny Graham, now Lieutenant General Graham, was present, and you say: "Another officer gave a talk full of complicated statistics which proved the Vietcong were running out of men. It was based on something called the 'cross-over memo' which had been put together by Colonel Graham's staff."

You recall that conference too, do you not?

Mr. ADAMS. Yes. And since I wrote that, I consulted my notes and the guy who gave the briefing was General Graham himself. Now general, then colonel.

Mr. McCLORY. Some months before that I received the same briefing in Saigon. The implication was it was just a matter of time until the North Vietnamese and the Vietcong would run out of men and the war was going to end. I guess that was the popular briefing line to provide at that time.

You did work with our staff, did you not, in helping to prepare a subpoena to be directed to the CIA for the purpose of getting information for this committee, which would help by elaborating on the things you are telling the committee?

Mr. ADAMS. Yes, sir; that is correct.

Mr. McCLORY. In addition, you have in your possession, do you not, certain classified information which, if declassified, could be useful to our committee?

Mr. ADAMS. Yes, sir. My notes, for example.

Mr. McCLORY. After you wrote this article in Harper's, did you not understand that the CIA had an article prepared which was to rebut your article and perhaps to comment about you?

Mr. ADAMS. Yes, sir; I was told by several friends of mine that the CIA had written up a biography of me; yes, sir.

Mr. McCLORY. That is a classified piece of material too, is it not?

Mr. ADAMS. I was told by my friends that this biography that they wrote on me was unclassified, that it was kept in the library and that you had to sign for it in order to read the thing. According to my understanding, it was unclassified when it was over in CIA headquarters.

Mr. McCLORY. In addition to the deception which was practiced on the entire American community as a result of downplaying or deliberately reducing the figures insofar as the forces of the Vietcong and North Vietnamese were concerned, there was also a distortion with respect to defectors, was there not? The North Vietnamese and the Vietcong were defecting in large numbers and therefore they knew how to come to our side, which was the free side, and they were going to eventually all line up with us?

Mr. ADAMS. The defections statistics were a real can of worms. They were usually presented to the public in such a way as to look like there were an awful lot of guys coming in who were important, when actually the fact was they weren't.

Mr. McCLORY. I think that is all I have at this time, Mr. Chairman.

Mr. GIAIMO. Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Adams, the primary purpose of this committee, as I understand our mandate, is to study our intelligence community, deter-

mine any weaknesses in its structure, operation and organization, then to make recommendations to the full House for correcting any deficiencies.

In that respect, my interest in the past is twofold: One, to parlay our past mistakes into corrective actions that can be applied to our present operations. The other is to detect any illegal acts that may have been committed and bring the responsible persons or person to justice.

In this statement I would like it clearly understood that I am not trying to conduct a Monday morning quarterback session, trying to criticize strictly judgmental factors.

You have already outlined several allegations that indicate to me the possibility of illegal actions on the part of some of the people in our military and intelligence structures.

Now let's go to the other purpose of this committee's assignment, and let me ask you a couple of questions there:

To your knowledge, does the CIA charter or CIA regulations contain wording that would direct agents, analysts and employees to do their work strictly on a scientific or rational basis, as opposed to being influenced by emotional, political or other nonquantitative and non-definitive factors? Is that a matter of regulation?

Mr. ADAMS. I haven't read the regulations. It sounds like it ought to be in there if it isn't.

Mr. MILFORD. It is not in the regulations, to your knowledge?

Mr. ADAMS. The regulations are a foot thick. I have never been through all of them.

Mr. MILFORD. In your work as an analyst, were you ever instructed to do your work strictly on the basis of a rational, definitive—in other words, were you ever instructed to take analyzed data quantitatively and render a conclusion based on logical principles, as opposed to being influenced even by your own emotions or political or other factors?

Mr. ADAMS. It was never put in the form of a direct order; no, sir. However, in training sessions—and I was a junior officer trainee for a period of 6, 7, or 8 months—we were constantly being drummed with the fact that we were supposed to be honest, objective, non-emotional, nonpolitical analysts. So whereas there was no regulation about it, about which I was aware, certainly that was part of the indoctrination we were given.

Mr. MILFORD. Would you, yourself, have any specific recommendation that you would make to this committee concerning any changes in our present intelligence laws, our present intelligence structures, or our present intelligence operations? If you desire, you could submit those later in writing to be included in the record, but would you offhand have any recommendations for this committee for substantive changes?

Mr. ADAMS. I would have perhaps two recommendations, or rather one recommendation and one suggestion. The recommendation is that some kind of body be set up, whether belonging to Congress, or goodness knows who, which could review what the intelligence community does on a continuing basis.

One of the troubles I had constantly was that I was trying to point out within the CIA that there were enormous intelligence shortcomings about Indochina. I complained within the Agency about

virtually everything I talked about in my prepared statement to you. And then some. The trouble was I didn't have anyplace to go which was objective. I went to the CIA Inspector General to complain, in essence, about the Director. Well, the problem with going to the CIA Inspector General is that the Inspector General has his fitness report written by the Executive Director and the Executive Director is appointed by the Director. So when I went to the CIA Inspector General to complain about the Director, I was complaining to the Director about the Director. It was a hopeless circle. So I think that some kind of body should be set up where people like myself have someplace to go where they won't necessarily be taken to task, or retaliated against.

Mr. GIAIMO. Will the gentleman yield?

Mr. MILFORD. Yes, Mr. Chairman.

Mr. GIAIMO. Wouldn't Congress be a good place for such people to go if Congress would give more attention to these problems?

Mr. ADAMS. Yes, sir; I believe it would. However, I might stick in my own opinion that I think there is at least something to be said for the administration's and CIA's point of view that some kind of restriction has to be placed on data and on complaints. Now, I am not saying the restraints have to be strict, or anything like that, but there has to be some kind of control, so that whoever he wants might not just, you know, say whatever he wants to in public.

Let me give an example. This is something that has already happened. It concerns Michael Harrington. I don't want to go into the rights and wrongs of what Congressman Harrington did. However, I can see the dangers of allowing any Congressman to make public anything he pleases. Now, I met Mr. Harrington once, and I thought quite highly of him. However, let me extrapolate. Say not Michael Harrington but say Vito Marcantonio. Should he be allowed to splash out anything he wants? Something has to be done to place some kind of control over what might be said by Vito Marcantonio—whom I have never met. In Congress some time ago, he was supposed to have been of questionable loyalty. I don't know whether that is fact or not.

I think that is really the answer to your question.

As I mentioned, I also have a suggestion. I don't know whether Congress can do anything about it, but there are still an awful lot of people in the intelligence community who grew up on Vietnam. Now that starts out with Director Colby and includes Mr. Proctor, and Mr. Walsh of the CIA; it also includes Gen. Daniel Graham of DIA, and Mr. William Hyland of State Department Intelligence. These guys all made their positions by screwing up intelligence on Vietnam, and now these same people run intelligence.

Now, I realize you people don't have power of appointment but maybe there is something you can do.

That is my suggestion.

Mr. MILFORD. If we were to have a permanent intelligence committee of selected Members of Congress in session at all times, would that satisfy your point?

Mr. ADAMS. Yes, sir; I think that would be a very good idea.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

I want to offer a comment first, Mr. Adams. I agree wholeheartedly with what Chairman Pike said a few moments ago, that if what you tell us here is correct, then we have a most serious situation that deserves the serious and constant attention of the Congress. However, I think that you, as an analyst, would probably agree with this statement: That on a matter of this importance we should seek the testimony of other witnesses. I am, therefore, not willing to conclude or make any judgments until we have the opportunity to examine other witnesses, witnesses who may have knowledge of the events of which you testify.

Mr. ADAMS. Yes, sir.

Mr. TREEN. With that in mind, are you able to give us the name of the person who gave the briefing to General Westmoreland that you spoke about a few moments ago?

Mr. ADAMS. Yes, sir, Col. Gains Hawkins. West Point, Mississippi. He is retired.

Mr. TREEN. What branch of the service?

Mr. ADAMS. U.S. Army. I think he is a reservist.

Mr. TREEN. Do you know who else may have been present at that briefing? I realize it was related to you as hearsay.

Mr. ADAMS. This is totally hearsay and I am not sure I have the story right.

Mr. TREEN. That is why I want the name of the person who gave the briefing.

Mr. ADAMS. It was Col. Gains Hawkins. I believe he informed me that General McChristian was in the room. I forget what General McChristian's first name is.

Mr. TREEN. In addition to distortion of numbers which you have alleged, was there evidence of distortion as to equipment that the enemy might have? You referred to the artillery that was rained in, that we apparently didn't anticipate—the amount of artillery used in the Tet offensive.

Do you have any evidence there was any distortion in the order of battle as to equipment in the hands of the enemy?

Mr. ADAMS. You have just opened an enormous Pandora's box, sir. There were large numbers of major disputes within the intelligence agencies over a variety of logistical problems. It seemed to me at the time there were some awfully funny things going on which I found difficult to square with evidence I had seen.

For example, Air Force intelligence almost invariably said they were cutting off the Ho Chi Minh Trail with their bombing missions. They were saying it so emphatically that I began to smell a rat, but that is all I smelled, you know. It was my supposition that something funny was going on.

I know, from my own personal experience, what I believe to be major deliberate distortions concerning Chinese shipments through the Cambodian port of Sihanoukville.

Mr. TREEN. Have you furnished any details on this to the staff of the committee?

Mr. ADAMS. No, I haven't.

Mr. TREEN. Would you be willing to do so?

Mr. ADAMS. Yes.

Mr. TREEN. It is most important we have any information that you have as to distorted reports on equipment the enemy had.

In the opening of your statement you mention the fact that the article published in Harper's was cleared by CIA. Yet today you chose to come here before the committee and quote verbatim from heretofore classified information. Does this represent a change in your approach to the problem, or exactly why do you now choose to quote directly from classified information without having had it cleared by the CIA?

Mr. ADAMS. Yes, sir, it does represent a partial change in approach, but I think it is an entirely different circumstance. On the one hand, I was writing a magazine article. On the other hand, in my statement today I was talking to people in Congress who have been chosen to look over the intelligence community.

Mr. TREEN. That explains it. Thank you.

Mr. GIAIMO. The time of the gentleman has expired.

Mr. Kasten.

Mr. KASTEN. In your statement you point out that a number of high officials in the intelligence-gathering agencies grew up on Vietnam and that this is something we ought to be concerned about at this time.

Is there any evidence that you have, or is there any way you could discuss with us, any kind of problem with distorting estimates or misuse of classifying documents, or whatever, that you are aware of at the present time in the intelligence-gathering agencies—or is Vietnam and the Vietnamese intelligence-gathering activities unique?

Mr. ADAMS. Starting off with the beginning of your question, I am not aware of anything untoward going on today. The reason for that, of course, is that I am not at the CIA. I officially left the CIA on June 1, 1973.

I have many friends in the Agency but I make it a point not to ask them about classified data, simply because I don't want to get them in trouble. And they know I am something of a maverick, I suppose.

I would like to make a comment which perhaps repeats the germ of something I said before—that Vietnam is unique, because we were involved in a losing war. And the pressures there became a great deal different than they are in normal intelligence. Without for an instant comparing any American administration to Nazi Germany, I have read a lot about German intelligence during World War II. When they were winning World War II, German intelligence was pretty good but as they began to lose, the political pressures grew and German intelligence became worse and worse.

Now I am not saying that we are a bunch of Nazis, or anything like that, but it is the problem of a losing war.

Mr. KASTEN. Is it also the problem of an intelligence gathering at sea or agencies dominated by or overly influenced by the military? You pointed out earlier the CIA estimates were more objective than the DIA estimates or the individual branches of the armed services.

Do the Defense Department estimates start to control what is going on? Why did CIA lose its clout? Why do you lose your objectivity in the overall estimate?

Mr. ADAMS. Again, it was a unique problem, I think, in Vietnam, because the CIA also got involved in fudging statistics and fudging estimates. By and large, I would say CIA is fairly honest. I have

frequently referred to it, even in the Vietnam situation, as the best of a bad lot. I am not at all critical of the existence of CIA. I think it is very important that we have it, or something very like it, in existence.

I do think it is an excellent idea to have some kind of intelligence outfit that isn't under the domination of the military.

I am not trying to say all the military are a bunch of liars and things like that, but there is a tendency for anyone in any profession—it is basically a problem of—what do you call it with Congressmen—you know, having a vested interest.

The CIA is built not to have a vested interest, and by and large it has done better than most other places.

Mr. KASTEN. On page 3 of your testimony, you said that "fearing public reaction" Westmoreland's command was lobbying to keep the estimate at its official level.

Mr. ADAMS. That is right.

Mr. KASTEN. You are saying that there were a number of people who were actively working with analysts such as yourself and other people to keep estimates low.

Now, this gets back to the question Mr. Johnson raised a minute ago. There obviously is some direction in the lobbying efforts, some overall direction. Does this direction start with General Westmoreland, say, his command was doing it, or does it work through other people, elected officials at the White House, people from the National Security Council? This was a total effort at keeping these estimates at the "official level." But it has to come from somewhere.

Mr. ADAMS. It seems to me that what is being got at is who was directing the distortion. I would like to relate another anecdote told to me by a man whose name I forget, but who had been on Rostow's staff. And the question came up whether President Johnson had ordered any distortion of intelligence. I repeat what the staffer said. I don't know what transpired but the staffer said that he doubted very much if Johnson would actually do something like ordering intelligence to keep a strength estimate under 300,000. I feel almost like I am telling somebody else's secrets, because this maybe isn't fair to President Johnson.

The staffer said that he didn't think President Johnson would order a distortion, but there was an atmosphere then that "Jesus, the boss wouldn't like to hear this."

Now, hell, I am giving you third-rate sloppy rumor, but I tended to believe that was the case. I don't know.

Mr. GAIMO. The time of the gentleman has expired.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Adams, did your duties encompass the studying of the numbers of North Vietnamese troops in South Vietnam?

Mr. ADAMS. I am afraid I didn't hear you. What did you say?

Mr. JOHNSON. Did your duties encompass studying and predicting the number of North Vietnamese troops?

Mr. ADAMS. Yes, sir; that came under my jurisdiction.

Mr. JOHNSON. That is one of the things I haven't seen as I have gone over this mountain of material. I think you passed on most of it to us.

At the time, there were allegations that there were misstatements of the amounts of North Vietnamese troops coming into South Vietnam, and that these figures were used for political purposes and were used in conjunction with the bombing justification.

Do you have anything that you can tell us about that?

Mr. ADAMS. Well, frankly, I always thought we were underestimating the numbers of North Vietnamese troops a little bit, but I think in that case the mistake was fairly honest.

Mr. JOHNSON. You don't know of any manipulation of figures to justify continuing to bomb or stop the bombing when we talked about having peace talks, or anything? You are not familiar with anything like that?

Mr. ADAMS. I am not familiar with any manipulation; no, sir.

Mr. JOHNSON. Thank you very much.

I have no further questions, Mr. Chairman. Thank you.

Mr. DELLUMS. Will the gentleman yield to me?

Mr. JOHNSON. I would be glad to yield.

Mr. DELLUMS. Thank you. I would like to comment on a brief statement you made, Mr. Adams, that does not go directly to your testimony, but I thought I certainly should comment.

You alluded to Mr. Harrington, a present Member of Congress, and Vito Marcantonio, a former Member of Congress. I would like to say, first of all, that I think it is very critical that we not construe people whose political views are considered progressive or left of center as ipso facto security risks.

Mr. ADAMS. You are absolutely right, sir.

Mr. DELLUMS. The press, when I was elected in 1970, said I was the furthest to the left ever elected since Vito Marcantonio, and I don't consider myself a security risk. I consider myself a person capable of challenging the policies of this country I disagree with. I think that is what it is all about.

I would suggest to you that, in describing Vito Marcantonio and other Members of Congress whose views are progressive or considered left of center, you describe them as Members of Congress with progressive views rather than subtly construe that if their political ideological perspective is left of center or progressive they in some way are considered security risks.

Mr. ADAMS. Yes, sir; I would like to make clear I know exactly what you are talking about, and what you say is very well taken. I would not say that because Mr. Harrington describes himself as a progressive, that necessarily he is more prone than somebody else, conservatives, to hand out or leak material. In fact, I have seen plenty of instances in which conservatives, or people described as conservatives, have leaked material which shouldn't have been leaked.

Mr. JOHNSON. Mr. Chairman, I still have time remaining, and Mr. Treen has asked me to yield to him. Let me interrupt this colloquy while I still have time and yield to Mr. Treen.

Mr. TREEN. Thank you for yielding.

One question that I wanted to get in was suggested again by Mr. Johnson's question. You didn't feel that the numbers of North Vietnamese troops were improperly estimated, is that correct? You think that perhaps they were underestimated a little bit, but I gather you are really not firm on that point.

Mr. ADAMS. Yes, sir; I would be firm on the point I thought they were underestimated, in fact by a good deal, but I think it was an honest mistake.

Mr. TREEN. I see, but in distinction, with respect to the Vietcong, you think that there was a deliberate distortion?

I am wondering why in one case it would have been deliberate distortion, but with respect to the troops of North Vietnam, it would not have been deliberate. Does that suggest that it is difficult to determine the numbers of the Vietcong—that is, to determine exactly who the enemy is when you are dealing with the people who are natives of the area?

Mr. ADAMS. Yes, sir. Certainly there were plenty of real difficulties in making estimates of the size of the enemy forces, whether southern-born or northern-born. However, the overall estimate, and particularly the estimate of southern-born, tended to be distorted, and the estimate of northern-born within the Communist forces tended not to be as distorted.

There is a political reason for that. At various times various administrations had been trying to portray the war as an aggression from the north, from North Vietnam; so there was a tendency, I believe, to be more honest in counting the guys coming down from the north than there was of counting southern-born rebels.

Mr. GAIMO. The time of the gentleman has expired. Mr. Field?

Mr. FIELD. Thank you, Mr. Chairman.

When I ended my questioning in the last round, Mr. Adams, I was in the middle of a review of the fate of different people who had either predicted or not predicted or participated in distorting intelligence with respect to the Tet offensive; and we saw that Joseph Hovey, Bobby Layton, and James Ogle, and yourself did not fare very well, but it was different in the case of Lieutenant Colonel Graham—and you related a story. Lieutenant Colonel Graham has now been promoted to lieutenant general?

Mr. ADAMS. That is correct.

Mr. FIELD. And he is now head of the Defense Intelligence Agency?

Mr. ADAMS. According to my last information; yes, sir.

Mr. FIELD. William Hyland participated with you in some of the meetings you described. Do you know where he is now?

Mr. ADAMS. The last I heard, he was the head of the State Department intelligence.

Mr. FIELD. INR, which is the State Department's intelligence unit.

Mr. ADAMS. Yes, sir.

Mr. FIELD. Paul Walsh is mentioned in a number of memos and wrote one of the memos you were asked questions about. Do you know where he is now?

Mr. ADAMS. Paul Walsh is Deputy Assistant Chief of the Research Branch of the CIA.

Mr. FIELD. He is, in effect, the No. 2 intelligence official in the CIA?

Mr. ADAMS. Yes, sir; No. 2 man in the research department.

Mr. FIELD. That is a considerable promotion from when he was in Vietnam?

Mr. ADAMS. Yes, sir; he started out, in fact, as a low-level analyst on Vietnam, as I understand.

Mr. FIELD. You mentioned George Carver in your testimony. Do you know what he is now doing?

Mr. ADAMS. Not precisely. I know he is in something called the Office of Political Research, or something like that.

Mr. FIELD. Our information is that he is now in charge of all national intelligence estimates for the CIA, and his title is the Deputy to the Director of CIA for National Intelligence Officers. Does that seem to be correct? And, in fact, General Westmoreland, whom you mentioned at one point in your testimony—was he not promoted when he came back from Vietnam?

Mr. ADAMS. I don't know whether he got a promotion in rank, but he was made Chief of Staff of the Army.

Mr. FIELD. You were fairly heavily involved in intelligence in Vietnam. Would you care to give us your characterization of the U.S. intelligence effort in Vietnam?

Mr. ADAMS. Yes, sir; I would believe that the intelligence effort in Vietnam was very haphazard, slipshod, often dishonest, prone to distort, and that it did not do the job that it was supposed to be doing.

[NOTE.—See rebuttal testimony in the committee's hearing of December 3, 1975.]

Mr. FIELD. Thank you very much. That is all I have, Mr. Chairman.

Mr. GAIAMO. Thank you very much.

Thank you very much, Mr. Adams, for meeting with us today and for testifying on what I think will be very helpful to this committee in arriving at conclusions and making some determinations.

The committee is adjourned.

[Whereupon, at 12:40 p.m., the committee adjourned, subject to the call of the Chair.]

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WITHHOLDING OF INFORMATION BY THE DEPARTMENT OF STATE—I

THURSDAY, SEPTEMBER 25, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Stanton, Dellums, Murphy, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; and Gregory G. Rushford, investigator.

Chairman PIKE. The committee will come to order. Our first witness this morning will be the Deputy Under Secretary for Management for the State Department, Lawrence S. Eagleburger. Mr. Eagleburger, you are welcome to proceed with your testimony.

STATEMENT OF LAWRENCE S. EAGLEBURGER, DEPUTY UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE, ACCOMPANIED BY WILLIAM G. HYLAND, DIRECTOR OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE, AND MONROE LEIGH, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. EAGLEBURGER. Thank you, Mr. Chairman. Accompanying me today, on my right is William Hyland, the Director of the Bureau of Intelligence and Research in the State Department. On my left is Monroe Leigh, the legal adviser of the State Department.

Mr. Chairman, I welcome this opportunity to appear today to explain the guidelines that we have established for officials of the State Department in giving testimony to this committee or its staff.

In a memorandum which I signed on September 22, a copy of which I believe is available to the committee, I set forth three requirements. They are:

First, State Department officials are to decline, by order of the President, to discuss classified materials.

Second, the Department of State insists that a State Department representative be present during the interviews. Should the interviewees wish to be represented by their own legal counsel, the State Department representative will be in addition to that private legal counsel.

Finally, the interviewees are to decline, by order of the Secretary of State, to give information which would disclose options considered

by or recommended to more senior officers in the Department of State.

[The September 22, 1975, memorandum referred to by Mr. Eagleburger is printed in the appendixes of these hearings on page 901.]

Mr. EAGLEBURGER. Let me first address the question of classified material. As the committee is aware, the President has directed that, pending resolution of the dispute between the executive branch and this committee over the responsibility for declassification and release of classified information, members of the executive branch are prohibited from furnishing classified information to the committee. Naturally, all officials of the Department of State are bound by this decision.

The other two conditions imposed by the Department are based on principles of the utmost importance to the employees and operations of the Department. It is not, at this point, clear to me that we in the Department and the members of this committee disagree on these principles. If there is disagreement, I want to be sure that we clearly understand the issues over which we are at odds.

Let me therefore state at the outset what we believe those principles to be. First, it is the responsibility of the Secretary and myself—as it was with our predecessors—to protect the integrity of the personnel of the Department of State and the Foreign Service. These people constitute a highly professional organization—an organization that must have a sense of cohesion and loyalty. And that loyalty runs down from the Secretary to all of his subordinates, just as it runs upward.

Second, it is also our responsibility to oppose steps that would imperil the ability of the Department of State effectively to formulate and conduct foreign policy.

As to the first point of principle—the confidential and orderly operation of the policymaking process itself—it is our belief that for this process to operate, all relevant officials must have unqualified freedom to discuss, debate, develop, and recommend various policy options. Secretary Kissinger has repeatedly emphasized this both as a matter of principle and as essential to an effective policy formulation process.

But this process cannot work in practice if it has to take place in public, or if those involved must expect that their advice and recommendations will be scrutinized and criticized after the fact.

Under these circumstances candid advice cannot be assured; the policymaker will have to discount opinions as to the extent he believes they are tailored with a view to public exposure.

Nor can we permit a situation to develop in which officers of the Department are reluctant to express opinions freely because they fear that they will be subject to public criticism, ridicule, or punishment for advocacy of a course of action which might at the moment be unpopular, but which they believe to be in the long-term national interest.

Nor can we permit a situation to develop in which others would be tempted to play to the grandstand by advocating policies simply because they have popular appeal.

Mr. Chairman, this is far from a hypothetical issue. To cite but a single example, the Foreign Service and the Department of State were torn apart in the late 1940's and early 1950's over an issue that

raised some of the same concerns that are before us today—the ability of Foreign Service officers to give to the Secretary and their other superiors their candid advice, secure in the knowledge that this advice will remain confidential. The events of those years not only injured individuals, but also did significant damage to the process by which foreign policy is made. Who can be certain how many recommendations during the years that followed were colored by memories of those experiences?

As Deputy Under Secretary for Management, the principal official responsible for the personnel of the Department and the Foreign Service, I have an obligation to see that the Department of State never again faces such a circumstance. I know that I have—and will continue to have—the full support of Secretary Kissinger as I carry out that obligation.

The second point of principle is that of “executive responsibility” for policy. It is the Secretary of State and his immediate principal advisers who are responsible for determining the basic questions of policy. And it is the Secretary and his principal advisers who are, and must be, accountable for the decisions they make and the actions they authorize.

Thus, just as we must preserve the confidentiality of the decision-making process, so must we preserve the accountability of the decision-maker. It is, therefore, those who bear responsibility for policy—rather than junior- and middle-grade Foreign Service officers—who should be held accountable for it.

If senior officials are responsible—as we believe they must be—they alone should be the ones to describe, explain, and defend their decisions. Thus, once the issue of classified information is resolved with this committee, we will be prepared to permit policy-level officials to appear before this committee to discuss the main considerations that were taken into account in formulating the policies finally decided upon, as well as intelligence information relating to the specific questions before this committee.

The Department will also be willing to make available to the committee, as we have in the past, State Department intelligence officers to discuss the facts concerning the intelligence situation surrounding the events under examination by the committee.

But we would not want any official who does appear to respond to questions designed to associate any particular individual with any particular course of action or recommendation. The sanctity of the privacy of internal debate, discussion, personal views and recommendations must, we believe, be preserved.

Finally, Mr. Chairman, we also have insisted on a third limitation for the protection of our employees—a State Department representative must be present during the interview of any subordinate officials of the State Department to provide advice to the interviewee on the application of the existing guidelines and, in the case of informal interviews, where no formal record is kept, to help note and remember the points covered.

Mr. Chairman, if the differences over classified information can be resolved, the Department is prepared to be cooperative in meeting the needs of this committee for information. We have an obligation and a duty to do so. But I also have another obligation and duty to the members of the Department of State and the Foreign Service—to

assure them the freedom and protection they need and must have if they are to give the Department—and the country—their best.

Thank you very much.

Chairman PIKE. Mr. Eagleburger, I find this a very intriguing document, and I am at a little bit of a loss to figure the "why" of it.

We obviously have some very grave differences between your idea of the sanctity of your communications and my idea of congressional oversight.

First, how many people work for the State Department?

Mr. EAGLEBURGER. The State Department employs 12,247 U.S. citizens.

Chairman PIKE. Twelve thousand American employees.

How many of those 12,000 do you include in your statement on page 8 that senior officials alone should be the ones to describe, explain and defend their decisions? How many senior officials are there in the State Department?

Mr. EAGLEBURGER. Mr. Chairman, I couldn't give you a specific number at this point. I would be glad to supply that for the record. I can describe in general terms what I am talking about.

Chairman PIKE. No; I don't want it in general terms.

Would 1 percent of the employees of the State Department be senior officials?

Mr. EAGLEBURGER. Mr. Chairman, I cannot give you a figure until I go back and make a count.

[Mr. Eagleburger subsequently advised the committee that "there are 308 'policy-level' officials" in the State Department.]

Chairman PIKE. Well, aren't you really telling us that in our role of congressional oversight we may interview less than 1 percent of your populace over there?

Mr. EAGLEBURGER. Mr. Chairman, I cannot make that statement or agree to it because I do not know what the percentage figure would be.

Chairman PIKE. You are the one telling us we can only interview senior officials, and I am trying to figure out who they are.

Mr. EAGLEBURGER. I would be glad to describe that for you, not in numerical numbers but according to the job they hold.

Do you want me to proceed in that manner?

Chairman PIKE. Not at the moment. We operate under a thing called the 5-minute rule here, Mr. Eagleburger, and one of the things I have learned over the years is that the executive branch has a great skill in giving the 5-minute answer to the 30-second question.

Mr. EAGLEBURGER. I don't think you will find that problem with me.

Chairman PIKE. All right, go ahead.

Mr. EAGLEBURGER. Generally speaking, it would seem to me that the policy-level officials we are talking about would obviously be assistant secretaries and above.

Chairman PIKE. How many assistant secretaries are there?

Mr. EAGLEBURGER. Offhand, there are about 10.

Chairman PIKE. This is your department?

Mr. EAGLEBURGER. I understand that. But I don't have an organization chart of the Department with me. I can provide it. There are about 10 assistant secretaries.

I would also include in that level, directors who, although not assistant secretaries and therefore not confirmable by the Senate, are in fact equivalent to assistant secretaries. For example, Mr. Hyland, to my right, is Director of the Bureau of Intelligence and Research. Obviously all the Under Secretaries of State——

[Mr. Eagleburger subsequently informed the committee that "there are 21 assistant secretaries and those of equivalent rank."]

Chairman PIKE. All right; let's just take Mr. Hyland's Bureau. We are primarily interested in intelligence. How many senior officials are there in Mr. Hyland's Bureau?

Mr. HYLAND. Two, Mr. Chairman, myself and my deputy.

Chairman PIKE. All right; how many people are there in your Bureau?

Mr. HYLAND. 330.

Chairman PIKE. So what you are telling us is that we may talk to 2 out of the 330 people whose responsibility it is to gather intelligence for the State Department; is that correct?

Mr. EAGLEBURGER. That is not correct. We are saying that you may talk to two in the Bureau of Intelligence and Research on the range of issues I have described in my statement. We have also made it clear, however, that we would be prepared to provide other people from the Bureau of Intelligence and Research to discuss the facts of intelligence.

Chairman PIKE. With an attorney from the State Department there telling them what they may say and what they may not say?

Mr. EAGLEBURGER. Not necessarily an attorney and not to tell him what he may or may not say, but to advise him, for example, while the classification issue remains, on what is and is not classified.

Chairman PIKE. You mean there is confusion down there as to what is and is not classified?

Mr. EAGLEBURGER. You know, Mr. Chairman, perfectly well that in a free-flowing situation between a questioner and participant there will be times there will be doubt in someone's mind whether an issue or subject is or is not classified.

Chairman PIKE. There wouldn't be any confusion as to documents, would there?

Mr. EAGLEBURGER. There would not.

Chairman PIKE. Now, you talk about options, and you don't want to discuss the options. It seems to me that where we were going when our hearings were sort of interrupted concerned the question of the Cyprus coup.

Let us assume that somebody in the State Department had knowledge that a coup was pending, and he had an option either to do something about it or not to do something about it. Do you think we should not get testimony on that? That is an option.

Mr. EAGLEBURGER. Let me make clear, Mr. Chairman, No. 1, that is not the way I am using the word "option." When I talk about option here, what I am talking about are optional policies to approach an issue.

Chairman PIKE. That is an optional policy.

Mr. EAGLEBURGER. That is a question of option whether you tell someone or don't. That is not the formulation of policy.

Chairman PIKE. My time has expired.

Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

I have read your statement and heard your statement, and I have also examined the transcript of the interview on which this controversy seems to have arisen, and it seems to me that we get down to the question of whether we are inquiring after facts or whether we are inquiring as to opinions and policies. Now, I have examined the authoritative Harvard Law Review article on this subject, which states very specifically a precise limitation on the authority of Congress, and it seems to me that the point that you are raising is supported by this article.

It says, "The executive must be able to protect itself from political exposure of internal program planning and debates of policy alternatives. Otherwise the independence of the executive branch in the conduct of its constitutional responsibilities might be weakened by subjecting its decisionmaking process to powerful pressures from either Congress or strong interest groups."

[The article referred to is entitled "Executive Withholding of Information from Congress," and was printed in the April 1972 issue of the Harvard Law Review. Excerpts are printed on pages 923-937 of the appendixes of these hearings.]

Mr. McCLORY. Now, as I understand it, you have no objection to responding with respect to facts—either at your level or at some other level, insofar as facts are known—their intelligence sources or through other means, with the sole criterion that a procedure must be adopted for receiving classified material?

Mr. EAGLEBURGER. That is correct, sir; and we go a step further, if I may.

Mr. McCLORY. OK.

Mr. EAGLEBURGER. That is we are also prepared to go further than that in terms of senior level officials of the Department. I want to make clear—

Mr. McCLORY. What authority do you have for having only senior-level persons testify with regard to facts when the fact may be in the possession of a person at some other level?

Mr. EAGLEBURGER. I am saying we are prepared to let the person at some other level, if the fact is in his possession, testify to those facts.

Mr. McCLORY. With the presence of somebody there.

Mr. EAGLEBURGER. Yes, sir.

Mr. McCLORY. What authority is there for having somebody else there?

Mr. EAGLEBURGER. The authority of the Secretary of State to control and manage the Department of State.

Mr. McCLORY. And do you think it is binding on this committee in its investigation to have to accept the presence of some third person?

Mr. EAGLEBURGER. I will defer to Mr. Leigh on that.

Mr. McCLORY. I don't want the authority now, but send me the authority, if you have any such authority.

[During his testimony at the committee's October 31, 1975, hearing, Secretary of State Kissinger rescinded the Department's requirement that a monitor be present at "sworn interviews by the Pike committee staff of Messrs. Boyatt, Grant, and Harris." Responding to a question from Congressman Aspin, Secretary Kissinger stated as follows:]

With respect to the * * * question on monitors, in preparing myself for this meeting and looking in more detail into some matters that I hadn't examined fully, I came across this issue of monitors, and I tend to agree with this committee, that is to say, I tend to agree that it should not be compulsory that State Department lawyers accompany officials who are testifying unless these officials request it.

I think the officials testifying ought to have the right to their own lawyer, and they ought to have the right to have a State Department official or lawyer present if they desire. But I will not insist on State Department monitors being present during testimony unless the officer testifying requests it.

So I will modify our policy in that respect, because I think your point is reasonable.

Mr. McCLORY. I did read this interview, and it seems to me it was a very poor interview insofar as trying to get at facts. I think we should do a better job of directing the questions if we want factual information instead of opinions which may be reliable or not reliable.

What are you doing, if anything, with respect to the adoption of the procedures which I have recommended—which all of the Republican members of this committee have recommended and to which the Democratic members on the committee have agreed? Have you expressed any opinion about that?

Mr. EAGLEBURGER. I have not personally, sir.

Mr. HYLAND. Are you referring to the question of classification and declassification, sir?

Mr. McCLORY. Yes.

Mr. EAGLEBURGER. That issue is out of our hands and in the hands of the White House.

Mr. McCLORY. You will abide by it when it is made?

Mr. EAGLEBURGER. Obviously; yes, sir.

Mr. McCLORY. We recommended a procedure by which the committee would have the authority to declassify or make public classified information, and you are aware of that?

Mr. EAGLEBURGER. Yes, sir.

Mr. McCLORY. I will reserve the balance of my time, Mr. Chairman, if I may.

Chairman PIKE. Would the timekeeper tell me how much time is remaining for Mr. McClory? A minute and a half.

Mr. Stanton?

Mr. STANTON. Thank you, Mr. Chairman.

Mr. Eagleburger, in 1973, when Secretary Kissinger was testifying on his confirmation, he said, and I quote: "There must be, as well, a closer relationship between the executive and legislative branches. It is the President's objective to make policy more accessible to the scrutiny and the views of the Congress. This is the fundamental answer to the question of executive privilege. As you gentlemen know, over an extended period of time when I was fully covered by this principle, I met regularly with the members of the committee, both individually and as a group, and most frequently with the chairman. I did so partly because I valued this association on personal grounds, but above all because of my conviction that this Nation faced no more urgent requirement than to promote mutual respect where a consensus was unattainable."

Do you think this statement is consistent with what you are indicating here this morning?

Mr. EAGLEBURGER. I do, sir. I don't think there is any conflict whatsoever. I think the Secretary has made it clear in his actions since

he made that statement, that he does intend to do his best to keep the Congress informed and involved in the formation of foreign policy.

I must say again, as I said in the statement today, the issue for me right now is an issue of principle. It is the question of our duty to protect junior- and middle-grade officers of the Department in the conduct of their duties within the Department of State. I do not see any conflict whatsoever.

Mr. STANTON. Well, if I suggested to you, Mr. Eagleburger, that many men rise to principle in order to cover their mistakes in terms of the Government, would you agree that that has happened in the Government in the past?

Mr. EAGLEBURGER. I would as long as it is not an implication I am doing the same.

Mr. STANTON. I don't know, because I don't have the knowledge, Mr. Eagleburger, that you have.

Mr. EAGLEBURGER. Fine; I know.

Mr. STANTON. Further, quoting Secretary Kissinger in his remarks for confirmation, he said:

In my new capacity, I shall be prepared to testify formally on all my activities in either capacity. In other words, I shall testify with respect to all matters traditionally covered by Secretaries of State and on my duties as assistant to the President concerning interdepartmental issues. I will not claim executive privilege in either capacity except for the one area customarily invoked by Cabinet officers, and that is, direct communications with the President or the actual deliberations of the National Security Council.

Do you think your testimony this morning on behalf of the Secretary of State is consistent with that statement, when he sought confirmation?

Mr. EAGLEBURGER. I do, sir.

Mr. STANTON. I must respectfully disagree with you, Mr. Eagleburger, because I see a direct contradiction in terms of your ability to disclose to this committee past actions in review of foreign policy of the Department of State.

It is apparent to us, and it is apparent to the public at large, that if you are to be the judge of rendering a sanitized version of your actions, then we in the Congress and the American people will never have a full opportunity to examine the unvarnished facts.

I regret very much that you have invoked what you consider high principle and what I consider an attempt in terms of language to protect yourself from a full airing of past decisions.

I certainly cannot see that the review of the Tet offensive decision, in terms of what you put as your defense, is any defense in your statement here today.

I yield back the balance of my time.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Eagleburger, first as a point of reference, you helped Mr. Kissinger in the transfer of power in 1969; is that correct?

Mr. EAGLEBURGER. Yes, sir, I did.

Mr. DELLUMS. You went on to NATO and Defense, and returned to the National Security Council, and in 1973 came to State with Mr. Kissinger; is that correct?

Mr. EAGLEBURGER. That is correct, sir.

Mr. DELLUMS. You are considered very close to Secretary Kissinger and in some quarters are referred to as Mr. Kissinger's enforcer?

Mr. EAGLEBURGER. Very well, sir, I will take your statement on that.

Mr. DELLUMS. Thank you. Was the decision to limit disclosure an attempt to protect the Secretary?

Mr. EAGLEBURGER. No, sir, it was not. It was an attempt to protect junior- and middle-level officers of the Department of State.

Mr. DELLUMS. It would be your testimony that you are not taking the fifth amendment for the Secretary of State at this hearing?

Mr. EAGLEBURGER. No, sir, I am not.

Mr. DELLUMS. What is the legal basis on which you are refusing to give this committee nonclassified information?

Mr. EAGLEBURGER. Mr. Leigh?

Mr. DELLUMS. And since you are going to answer, Mr. Leigh, I would like to ask you a follow-on question: Can you show the committee the document upon which this decision was made? Do you have such a document, and who signed it?

Mr. LEIGH. Mr. Dellums, may I say for the record my name is Monroe Leigh. I am the legal adviser of the State Department.

There is not a document which has been signed except the document which Mr. Eagleburger has himself signed. As to the authority, this is set forth in title 22 of the United States Code in various sections which direct the Secretary to manage the State Department.

[NOTE.—A memorandum of law, provided to the committee by the State Department on October 3, 1975, is printed on pages 903-909 of the appendixes of these hearings.]

Mr. EAGLEBURGER. May I add, sir, it is not to my knowledge that we have refused to give nonclassified information.

Mr. DELLUMS. I would like to quote from that title 22, subchapter III, entitled "Duties of Officers and Employees: Officers and employees of the Service shall, under the direction of the Secretary, represent abroad"—and those are the two important words, "represent abroad"—we are not abroad in this hearing—"the interests of the United States and shall perform the duties and comply with the obligations resulting from the nature of their appointments or assignments or imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party."

No. 1, how do you translate your argument this morning into the terms "represent abroad"? We are not abroad.

And No. 2, can you quote the law that you are operating under this morning?

Mr. LEIGH. Mr. Dellums, that section came up in the transcript which was made on Tuesday of this week. At that hearing, you remember that Mr. Boyatt had with him his personal attorney. His personal attorney cited that very section, 841, as the basis for not responding to certain questions which were put to him. So his interpretation was the opposite of the one which you give.

Now, the sections that I was referring to and which Mr. McClory asked me to elaborate in a subsequent submission for the record, are title 22, section 2651; title 22, section 2657; title 22, section 2658, and title 22, section 2664, all of which provide for the comprehensive management of the Department of State.

Mr. EAGLEBURGER. Let me also add again, if I may, I am not aware I have said at any point today that the Department of State

has made a broadcast decision not to provide nonclassified information to this committee.

Mr. DELLUMS. Do you believe Congress has the power to inquire into maladministration or inefficiency of agencies of Government, and are you asserting this morning that the executive branch has the power to limit the ability of Congress to investigate and publicize corruption, maladministration, or inefficiency on the part of governmental agencies?

Mr. EAGLEBURGER. In answer to the first question, I do agree that the Congress has that authority.

In answer to the second question, no, I am not, of course, denying or saying that the State Department is taking a position which would prohibit you from doing so.

Mr. DELLUMS. September 11 was the day that this committee and the intelligence community came into conflict around the issue of declassification.

Prior to September 11, did you or anyone else, to your knowledge, discuss, propose, or plan causes or contingencies which would preclude, under any guise or assertion, giving any information to this committee?

Mr. EAGLEBURGER. I am sorry, could you repeat that? I got most of it.

Mr. DELLUMS. Prior to September 11, did you or anyone else to your knowledge discuss, propose, or plan causes or contingencies which would preclude, under any guise or assertion, giving information to this committee?

Mr. EAGLEBURGER. Mr. Dellums, I am reasonably certain of the date, but I would have to check the records.

Mr. DELLUMS. September 11 was on Thursday.

Mr. EAGLEBURGER. Yes, sir. I think it was September 10 that Mr. Hyland and I briefly discussed with the Secretary of State in his office the issue of how State Department representatives ought to be interviewed or appear for testimony before this committee. We arrived at no conclusions. We did, however, discuss the subject briefly that day.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen?

Mr. TREEN. Thank you, Mr. Chairman.

Mr. Eagleburger, can you tell me if a policy such as you have outlined here today was ever adopted before by the Department?

Mr. EAGLEBURGER. I think it is safe to say that—I don't know that I can say it has ever been as explicitly stated as this. I can't say it hasn't either. It is safe to say our belief and our opinion that the position we have taken here is a position traditionally taken by the Department of State as it runs to the issue of the discussion of the internal decisionmaking process of the Department.

Let me ask Mr. Leigh if he would like to amplify.

Mr. TREEN. I would ask if you can provide for the record any history of other instances where you have adopted this or a similar policy with regard to any other committee of the Congress.

Mr. EAGLEBURGER. Right, sir; we will do so.

[NOTE.—A memorandum of law, provided to the committee by the State Department on October 3, 1975, is printed on pages 903-909 of the appendixes of these hearings.]

Mr. TREEN. Second, among the facts that you say could be communicated on page 9 of your statement, as I understand it, no attempt is made here in your policy to prevent any person within the State Department, at any level, from testifying as to a fact?

Mr. EAGLEBURGER. That is correct, sir.

Mr. TREEN. As opposed to a policy or reason for policy?

Mr. EAGLEBURGER. That is correct, sir.

Mr. TREEN. Now, would that include a fact relating to the line of communication; that is, would your policy inhibit—assuming the policy stays in effect—the inquiring of a factual witness as to whom he related information or from whom he received information?

Mr. EAGLEBURGER. I cannot conceive under these circumstances, sir, where we would have any objection to that.

Mr. TREEN. All right. Third: I wish you would refer to page 10 of your statement, the paragraph which reads, "Mr. Chairman, if the differences over classified information can be resolved, the Department is prepared to be cooperative in meeting the needs of this committee for information. * * *"

I have two questions. What kind of resolution do you have in mind that would permit this increased cooperation, and, second, assuming that resolution, what changes in your policy would occur?

Mr. EAGLEBURGER. Mr. Congressman, as to the first question, what I am speaking to here clearly is the issue over the classification or the declassification of documents.

I can't speak to what the resolution of that issue might be. That, as I indicated earlier, is in the hands of the White House. We will do whatever is ordered by the White House. If they can arrive at an accommodation on this issue, we will proceed apace. That would obviously remove from us the requirement that we not reveal any classified information to this committee.

As to what changes in our policy would occur, basically they would be changes, I would assume, in relation to the classification. You know, we would be able to provide, divulge, classified information to this committee.

The procedure in terms of what officer appears to discuss what, it would seem to me, remains in effect as far as we are concerned, as I have described it here. Junior-level, middle-level, officers are free to come up here and discuss facts, classified or not.

Mr. TREEN. Yes, sir. Let me ask one other question.

What I am trying to determine here is: Let's assume for the purpose of this question that this committee would receive information from the State Department and not release any of it to the public. Would the policy of the State Department then be to release all information?

In other words, is it a fear of release to the public that has resulted in this policy, or is there apprehension about even the members of this committee and the staff having the information?

Mr. EAGLEBURGER. Mr. Congressman, of course, it is my view, at least, that the administration is not taking a position that there is a fear that members of this committee or the staff should not receive classified information. I do not think that is the issue. However, I am speaking on a personal basis now. I am not privy to nor involved in the decisions in the White House on this issue.

Mr. TREEN. In other words, if we conducted this inquiry—and I am not saying at the moment we should—but if we conducted this

investigation, this inquiry in executive session throughout and without any release of information, you would have no reason then to implement any of this policy, other than perhaps having a representative there?

Mr. EAGLEBURGER. Other than the issue of again getting into a discussion of the internal procedures process, recommendations, of the decisionmaking process within the Department, again going back to my statement and our concern about that; our concern there being the concern to protect junior and middle-level officers.

Mr. TREEN. I think my time has expired. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Eagleburger, if you feel we cannot get into discussions with middle-level and junior-level officers about current policy and what has taken place before, how are we in the Congress to determine whether or not we are getting our money's worth for our intelligence dollar?

Mr. EAGLEBURGER. I would make a distinction again as to discussions over the facts of intelligence—middle junior-level officers' ability to describe what the facts of the intelligence situation were at a time. You are perfectly welcome, and we would welcome the opportunity to send senior-level officers up here to describe the policy—

Mr. MURPHY. We did that Tuesday, and we didn't get anything from them. You remind me of a magician in a sideshow. You tell us one thing but what you give us is quite different.

Our staff conducted an interview with Mr. Boyatt Tuesday, and Mr. Field asked him to discuss a question in detail, and he wouldn't get into the details.

Mr. EAGLEBURGER. Mr. Boyatt is precisely the issue I am talking about. He is a middle-level officer, not a policy-level officer of the Department.

Mr. MURPHY. He wouldn't even talk about facts. And that is what you are telling us today. On the one hand, you say they will talk about the facts, and then we get them and talk to them and they won't give us the facts. Not only will they not give us the policy, but they won't even give us the facts.

Mr. EAGLEBURGER. If the issue at the present moment is a classification issue on the facts, then he is proscribed by order of the President from describing it. If, however, the factual situation is unclassified, we are prepared to permit him to testify to that as long as it is on facts that are unclassified.

If the classification issue is resolved, we are prepared to permit people of his level to discuss classified facts.

Mr. MURPHY. Mr. Field here, our counsel, asked him a question regarding nonclassified intelligence reports, and Mr. Boyatt refused to discuss them.

Mr. EAGLEBURGER. I cannot answer as to the specific question you are talking about.

Mr. MURPHY. This is the mumbo jumbo you are giving us. You tell us you will give us facts, and when we get the people here, they won't give us the facts.

Have you ever had any conversations prior to September 11 with Mr. Rogovin, counsel for Mr. Colby?

Mr. EAGLEBURGER. I don't even know the gentleman.

Mr. MURPHY. How about you, Mr. Leigh? Have you talked to him?

Mr. LEIGH. Prior to the 10th of September, I had never talked to him.

Mr. MURPHY. Have you talked to him since the 10th of September?

Mr. LEIGH. Either yesterday or the day before, he called me about the fact that some CIA witnesses were coming up to the committee and that is the only time I have discussed anything with him.

Mr. MURPHY. Did he discuss any of his testimony here in executive session with you?

Mr. LEIGH. None whatever.

Mr. EAGLEBURGER. Mr. Murphy, if I may return to your previous question for a moment, so far as I am aware, prior to the President's order on the classification issue, I believe the Department of State has provided all information requested by this committee.

Is that correct, Mr. Hyland?

Mr. HYLAND. Yes.

Mr. MURPHY. But then it is not correct, and you won't discuss it with us when we get the people up here. You get in front of the press, and you tell us one thing and when we interview your people, you tell us another.

I think the American people should realize that as far as I am concerned we have a one-man show in the State Department with Dr. Kissinger, and whatever he wants, he gets, and the Congress can be damned.

Thank you, Mr. Chairman.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Eagleburger, I would like to follow up perhaps more explicitly on Mr. Stanton's line of questioning.

First of all, I am very sensitive to the way you have laid the foundations of what the issue is here, and I don't really want to allow you to run away with the basic premise of today's hearings, and I think in your testimony you are very carefully obscuring what the basic issues really are.

You have come here as a defender and as the person who has screwed up the guts of the State Department to protect those middle- and junior-grade officers in the State Department. I want to congratulate you for having finally brought that to the level of attention that it apparently is now getting at State.

Perhaps what you will do is go back and perhaps rehabilitate some of those who were abused and run out of the State Department during the debate over China policy, which I think you are making reference to when you talk about the 1940's and 1950's.

Unfortunately, I hadn't yet reached 10 years of age when that was going on, so you can count on me to bring a different kind of tradition down here to the Congress on it.

The fact that I am trying to bring out clearly and very explicitly—and I think I speak for everybody on this committee—is that in no way is anyone attempting to run the kind of cowboy operation that has been run in Congress before in order to abuse and to ultimately cause the kind of purges that State, itself, saw fit to carry out during the times you have mentioned here in your testimony.

And the fact is that we are really not, as you say, dealing with the hypothetical issue at all. But I don't think there has been one instance that you can cite, or that Mr. Leigh can cite, where this committee has ever taken it upon itself—in the tradition of the McCarthys, the Jenners, and all of those others—to attempt to abuse the State Department and to somehow or other get a string of goats out before the press and before the public and to, in essence, run a purge operation. We are not trying to do that at all.

You complain about your officers being subjected to some degree of public scrutiny. The fact is, if you have the level of guts which you claim you have corporately in the State Department, that you are protected by a myriad of laws and a battery of lawyers, and that is why you have those. That is why you have the appropriation for those things—in order to protect you from the kind of abuse that might flow from that—and I really don't think it is the case of your standing between utter disaster and a purge down at State by this committee.

That is not the case at all, and that is not our purpose. If I thought it was, I think we would very easily handle it right on the floor of the House. There are enough people who are sensitive to that issue.

I think we really should clarify that point. I object most strenuously to the implications that I think are there, and I am really not going to sit around and be engaged in what has in part turned into a political battle here. That is my profession, being a politician, and by God, I will be one, and if we are going to deal at that level, we will go at it on that basis.

Mr. EAGLEBURGER. May I respond?

Mr. HAYES. I would appreciate hearing you respond.

Mr. EAGLEBURGER. Mr. Hayes, there is no implication in my statement that this committee is performing in the way I described what the Department went through in the late 1940's and early 1950's. That is not, sir, my point.

It is, I think, often true that the defense of a principle which is one we consider valuable and extremely worth protecting often must be protected when the objective facts are not necessarily the strongest that can be made in defense of the principle.

However, sir, the Department of State has had at least one experience which tells us that the principle has to be protected ab initio, and it is our view not that this committee is intending anything of the sort, but rather when you compromise on the principle, the precedent is established, and it is far harder to defend it thereafter. There is no indication this committee intends anything of the sort. But we have a principle, irrespective of the objective facts, I feel obliged to defend.

Mr. HAYES. I hope that that is clarification enough, and I think it is unfortunate that the words can be given that meaning, and I certainly don't consider myself to be any casual observer of testimony. As I read it, I think there is that clear implication, but I think if we have it clearly understood between us now, out front, perhaps we can go ahead with the debate and move on with it without that kind of cloud being over it. I fear it was there.

Chairman PIKE. The time of the gentleman has expired.

Mr. McClory, do I understand you would like to use your minute and a half at this particular point?

Mr. McCLORY. If I may, Mr. Chairman. Thank you.

Chairman PIKE. Certainly.

Mr. McCLORY. These further questions occur to me. One thing is, I don't see how this committee can fulfill its mandate and fulfill the obligation that we have to investigate the intelligence agencies and the entire intelligence community with the kind of lack of cooperation which I think we are getting from the State Department when our inquiry is directed to you.

Now, would you tell me this: Would you be able to tell us anything more, or produce more information for the committee, if we were in executive session than you are able to provide in this public session?

Mr. EAGLEBURGER. You mean today?

Mr. McCLORY. Today or any time that we set a time.

Mr. EAGLEBURGER. In terms of the issue which I have been invited up here to discuss, sir, I have no problem in public session or executive session. I have made my statement. In terms of the question of classification of documents, when that is resolved, a lot of things are resolved.

Mr. McCLORY. Is there any additional information which you have received from the CIA or DIA or any other intelligence source that you are withholding from us today regarding the Cyprus issue, which you would be able to give us in executive session, or written form or any other way?

Mr. EAGLEBURGER. My understanding when I was invited up here yesterday was to come up to discuss the issue of the Department of State's position on permitting witnesses either to testify or be interviewed up here. I had no knowledge whatsoever I was to come up to discuss the substance of Cyprus or any other issue of that sort. I am not involved in those issues.

Mr. McCLORY. What about Mr. Boyatt's appearance before the full committee in contrast to being interviewed? Is there restriction or limitation on his ability to come here and testify before this committee with regard to facts that he received and he knew about regarding the issue of the Cyprus coup and the invasion of Cyprus by the Turks?

Mr. EAGLEBURGER. As the situation stands now, Mr. Boyatt may come before this committee to discuss facts so long as they are unclassified.

Chairman PIKE. The time of the gentleman has expired.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Eagleburger, when you are talking about protecting the middle-level employee of the State Department, that is a worthwhile objective. I don't know that anybody would argue with that, particularly in light of the McCarthy fiasco, the debacle that occurred as a result of that. But I don't see where your third paragraph of the order, which evidently is the only one that we have to deal with, touches that subject at all.

You rely on the principle of protecting the middle-level individuals, as I understand it, with this paragraph, which is the only thing that we have we can deal with. You say the interviewees are to decline by order of the Secretary of State—and we don't have an order. That has been acknowledged, as I understand it. We don't have an order from the Secretary of State in writing, do we?

Mr. EAGLEBURGER. I beg your pardon?

Mr. JOHNSON. We do not have an order in writing from the Secretary of State. According to counsel, this is the only written document on which you rely.

Mr. EAGLEBURGER. We have an oral order to me from the Secretary.

Mr. JOHNSON. So you are carrying out his order orally by this paragraph?

Mr. EAGLEBURGER. Yes, sir.

Mr. JOHNSON. "The interviewees are to decline, by order of the Secretary of State, to give information which would disclose options considered by or recommended to more senior officers in the Department of State."

How does that relate really to disclosure of the identity of junior or middle-level officers' recommendations? Why can't we have those recommendations, those options, without disclosing the identity of those who made them? Where is this big noble principle that you are talking about? It really isn't a principle of protection at all, is it?

Mr. EAGLEBURGER. I think it is, Mr. Johnson. The point is, it seems to me—and it seems to me also that the interrogation of Mr. Boyatt the other day indicated this sort of a problem—that when you ask a junior or middle-level officer who is not responsible for making the policy to begin to describe the options and the internal process of the development of the policy within the Department of State, you put him in an intolerable position. Because he then—without knowing all of the facts that were available to, or all of the elements of the decision that went into the minds of, the policy-level officials—is asked to make comments, to describe, to get into the internal workings of the Department of State in its policymaking process. It puts him in an intolerable position.

If you want that sort of information, to the degree we can give it to you, it ought to come from policy-level officials who are responsible for the policy, for the decisions that were made, and who are senior enough to be able to come up here and give it.

We are not saying that we are not prepared to give information. I am going to the issue of junior and middle-level officers.

Mr. JOHNSON. Well, do you think that junior- and middle-level officers are bullied or beaten with a rubber hose by any members of this committee or any member of the staff of the committee?

You talk about your defending them. What are you defending them from?

Mr. EAGLEBURGER. I am defending them from being required, asked, pursued by—I don't mean with a bludgeon, of course, gently or any other way—any congressional committee to try to describe the internal workings of the Department and the inevitable questions that can follow from that.

For example, "What was your opinion on this?" "Do you think we did it well?" "We did not do it well." It puts him in a terrible position.

I am not averse to discussion of whether the policy was wise or unwise. The issue is who should come up and discuss that with you. That is all.

Mr. JOHNSON. I don't understand that your response is directed toward the paragraph we are talking about, which would disclose options considered by or recommended to more senior officers. We are not talking about asking some GS-7 or GS-8 down there what his opinion was as to what should be done in Cyprus. That isn't what your

order says. It says that if he came into this information, he could not disclose what kind of options or recommendations were made. We are not talking about to whom. It seems to me you have said one thing here, and you are defending something else, and it doesn't follow.

Mr. EAGLEBURGER. Aside from the fact, Mr. Johnson, that I disagree on that, and I guess we will continue to disagree, the point I think I am trying to make here is that there is a decisionmaking process, the inviolability of which I feel it is our obligation to protect as well as the junior- and middle-grade officer, and that when you want to discuss options, what went into the consideration of the development of a policy, to the degree that should be discussed, it should be discussed by senior-level officers.

They are two principles. I think they are related.

Mr. DELLUMS. Would the gentleman yield to me to rephrase the question?

Mr. JOHNSON. Yes.

Mr. DELLUMS. Is the gentleman suggesting that we cannot discuss the intelligence process as part of the policymaking process, because if you are asserting that, we can't do one damn thing on this committee.

Mr. EAGLEBURGER. Not at all. I am not saying that at all.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman?

Mr. LEHMAN. Could I reserve my 5 minutes until after Mr. Field's time?

Chairman PIKE. Certainly. Mr. Field?

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Eagleburger, I would like to go through a little background as to why you are here today, because I think it would be enlightening.

We asked Mr. Boyatt to come in here to be interviewed by the staff under oath because we were preparing for hearings today on Cyprus.

I was able to get absolutely nowhere with questions to Mr. Boyatt, and frankly we could not continue with hearings today because of that.

I would like to get the real facts out on the table now—the kinds of questions that he could not answer. I will read from the transcript of that interview.

"Mr. Boyatt, would you please describe for us in detail——

Mr. EAGLEBURGER. Mr. Chairman, may I raise a point here, sir. It is my understanding that that transcript was classified by this committee as top secret. I have no objection to proceeding with the discussion of the transcript. I want to make it clear, however, that I raised the point.

Chairman PIKE. We sometimes get into such awful habits. The transcript was made by a sten-typist and then it was classified as top secret. The committee did not classify it top secret. The reporters to the House committees classified it top secret, and this is the kind of thing that has happened so many times in our careers.

Mr. EAGLEBURGER. Thank you.

Mr. FIELD. The question again was, "Mr. Boyatt——

Mr. EAGLEBURGER. Could you give me the page?

Mr. FIELD. Page 21.

Mr. Boyatt, would you please describe for us in detail what was done in the State Department not with respect to classified intelligence reports or information, but what was done in the State Department prior to the coup, to either head it off or to encourage it, whether or not there were any deals made with anybody that the United States would lay off, would not lay off, would aid the Turks,

would encourage the Turks, would discourage the Turks, would control the Turks, would not interfere if Makarios was overthrown, your knowledge of any of those events, who was involved, and what they were doing.

Mr. Hitchcock then replied—

Mr. TREEN. Mr. Chairman, may I raise a point?

Chairman PIKE. Not out of Mr. Field's time. His time will be extended. Go ahead.

Mr. TREEN. The inquiry is whether or not the interviewee, Mr. Boyatt, was given any assurances or whether any statement was made at the time he was interviewed or prior to coming up that his interview—his responses—would be kept as classified information until such time as the committee acted? Was there representation that it would be kept secret, classified, and so forth?

Mr. FIELD. Mr. Chairman, when we interviewed Mr. Boyatt, we knew, operating under the President's order, we could not have classified information, so we made no attempt to ask about classified information.

My question stated that it would not relate to classified information.

Chairman PIKE. Mr. Field, everybody keeps talking about the President's order. Have you seen it?

Mr. FIELD. I have never seen it, Mr. Chairman.

[NOTE.—By letters dated September 18, 1975, Chairman Pike requested from Mr. Kissinger—in his capacities as Secretary of State and Assistant to the President for National Security Affairs—certain materials relating to events in Cyprus, Greece, and Turkey in 1974. Those letters, replies from William G. Hyland (the State Department's Director of Intelligence and Research) and Lt. Gen. Brent Scowcroft (Deputy Assistant to the President for National Security Affairs), and other correspondence relating to the President's order of September 12, are printed on pages 895-900 of the appendixes.]

Chairman PIKE. I haven't, either. Go ahead, Mr. Field.

Mr. FIELD. Mr. Hitchcock, who was giving advice, said, "I regret but it appears to me that this comes to the problem of the description of the decisionmaking process which my instructions seem to indicate is proscribed."

I then replied, "In other words, it is your position that who was doing what in the State Department has something to do with decision-making."

"Yes," was the answer.

Mr. EAGLEBURGER. Is there a question here?

Mr. FIELD. The question that I asked Mr. Boyatt had to do with facts. It did not necessarily have to do with policy, or policymaking. He was not able to answer it. Was he operating under erroneous instructions?

Mr. EAGLEBURGER. Mr. Chairman, I feel I must say that there is another plot here. The copy of the testimony given to me by the committee doesn't have any page numbers on it, so I am in a little bit of difficulty here.

Let me answer the question. I have gone through the entire transcript. With all due respect to Mr. Hitchcock, I might say he had little time—he had a conversation with me 30 seconds over the telephone. He then received my order the next morning. He and I did not have an opportunity to go into a discussion of what the order meant.

Having read through this transcript, there are a number of occasions when it would seem to me clear—and you read one of them—where the issue is classification, not the imposition of the—

Mr. FIELD. Mr. Eagleburger, I said in my question I did not want classified information.

Mr. EAGLEBURGER. I understand that. I am saying in terms of your discussion that day, the issue would have had to have been raised on the question of classification rather than the issue that was described to you. I might also say—

Mr. FIELD. This was all a big mistake?

Mr. EAGLEBURGER. Mr. Hyland offered to—did you not—to come up and discuss or see if there wasn't some way we could describe more clearly the issues to which our order ran.

I am prepared to say, yes, it was a mistake.

Mr. FIELD. Mr. Hitchcock was on the telephone with other officials during this interview. I would assume he must have consulted with somebody.

Mr. HYLAND. I talked to him in the middle of this interview. The discussion was about Mr. Eagleburger's memorandum, and the upshot of the conversation was my view that the memorandum stood and that all three paragraphs were applicable. Whether Mr. Hitchcock chose the right language and the right time, I can only give you my opinion of the record, but there is one thing that is clear from this transcript, and that is that you on several occasions put to Mr. Boyatt his view of how the policy was made, what was done, what Mr. Sisco did, what Mr. Kissinger did, what the State Department wanted to do about policy, and that is the issue we have now.

The distinction between intelligence and the intelligence process, which Mr. Boyatt can speak to at great length, and the policymaking process, we believe has to be restricted.

Mr. FIELD. I only have a few minutes, and I want to get to that point.

Mr. Boyatt is not some minor official. He was the chief State Department officer for Cyprus. Obviously in our investigation of the Cyprus coup, he is not a minor official. He was as responsible for what was going on there as anybody else and certainly as informed as anybody else.

Mr. EAGLEBURGER. Mr. Field, Mr. Boyatt was the desk officer for Cyprus. He was not the desk officer for Greece and Turkey. He is not, in our view, at the policy level I am describing to you, and it is therefore that it runs to Mr. Boyatt or anyone else in his circumstance.

Mr. FIELD. So he, under paragraph 3 of that memorandum, cannot talk to us. Under what theory—

Mr. EAGLEBURGER. Wait a minute.

Mr. FIELD [continuing]. Is this paragraph 3 promulgated?

During the course of the interview, it was maintained four or five times that this was based on executive privilege. Is that true?

Mr. EAGLEBURGER. That is not correct.

Mr. FIELD. Could you read for us the law under which this man, under oath, was refusing to testify before this committee?

Mr. EAGLEBURGER. I will refer to Mr. Leigh in a moment, but because he was receiving a lawful order from the Secretary of State. Mr. Leigh?

Mr. FIELD. Pursuant to what law?

Mr. LEIGH. The same citations which I gave to Congressman Dellums.

Mr. FIELD. The numbers don't help. I have been through those sections. I don't see anything in those laws which give the Secretary of State the authority to order somebody not to testify under oath.

Mr. LEIGH. This would be true in any executive agency, I am sure.

Mr. FIELD. Could you please read for us the section which gives the Secretary of State the legal right to order somebody not to testify to this committee?

[NOTE.—A memorandum of law, provided to the committee by the State Department on Oct. 3, 1975, is printed on pages 903-909 of the appendixes of these hearings.]

Mr. LEIGH. While I am getting a copy of the code, may I say I think truly this is a false issue. What is involved here is the constitutional question. The principle stated in Mr. Eagleburger's third paragraph is one which has been discussed for 100 years by constitutional law authorities. One was suggested by Mr. McClory a moment ago, when he referred to the Harvard Law Review. This is not a new proposition. This is a most fundamental proposition in the constitutional relationship between the branches of the Government. This is the real legal issue.

Mr. FIELD. Could you please cite for me one instance in recent years where this has been applied?

Mr. LEIGH. When I was in the Pentagon in 1959 we said exactly the same thing with respect to a request by the General Accounting Office. What did the General Accounting Office want? They wanted the recommendations which had been made by the head of the U.S. military mission in Turkey to the Joint Chiefs of Staff. They wanted it before the Joint Chiefs of Staff had even acted on those recommendations, before the President had seen them. We invoked exactly the same principle and the GAO did not thereafter challenge it.

That entire controversy is discussed in an article in the University of Michigan Law Review, which I will be glad to get the citation for.

[The article referred to was written by Gustave M. Hauser and is entitled "The Investigatory Powers of the Comptroller General of the United States." It appears at pp. 1191-1216, Michigan Law Review, published 1961.]

Chairman PIKE. The time of the gentleman has expired.

Mr. Leigh, would you not say that you could make a pretty valid legal distinction between seeking to get information before it has been passed on to higher authorities and seeking to get the inputs that go into the decisionmaking process a year after the fact?

Mr. LEIGH. Yes, I agree there is a difference, Mr. Chairman.

Chairman PIKE. So the precedent which you have cited would hardly apply to our seeking to get information on the Cyprus issue?

Mr. LEIGH. As I understood the passage which was read by Mr. McClory from the Harvard Law Review, they were talking about something broader than that. It would seem to me to cover both of these areas clearly.

Chairman PIKE. They may well have been.

Mr. Leigh, if you are the attorney for the State Department, why did witnesses from the State Department seeking legal advice call Mr. Rogovin, rather than you?

Mr. LEIGH. Mr. Chairman, I do not know that that is the case. I had not heard it until you suggested it in your question. As a matter of fact, I do recall that Mr. Boyatt bitterly rejected the notion that he was in any way subject to direction from the Central Intelligence Agency when this came up peripherally in the Tuesday discussion.

Chairman PIKE. Let's get back to the question of your statement, Mr. Eagleburger, page 9. " * * * would not want any official who does appear to respond to questions designed to associate any particular individual with any particular course of action or recommendation."

Now, let's assume that the man who was in charge of Cyprus in your area had recommendations about what should be done. Let's assume that there was available intelligence indicating that some sort of action might be taken against Mr. Makarios, and let's assume that the man in charge of Cyprus had recommendations in that regard.

Would you prohibit this committee from eliciting those recommendations?

Mr. EAGLEBURGER. Yes, sir; that is correct.

Chairman PIKE. Let us assume——

Mr. EAGLEBURGER. Policy recommendations.

Chairman PIKE. Let us assume that we had intelligence pertaining to a possible Turkish invasion of Cyprus and the intelligence was in the hands of some nonpolicymaking person and he made a recommendation but it never got delivered to a policymaking person. Would you prohibit him from testifying as to his recommendation?

Mr. EAGLEBURGER. I am going to let Mr. Leigh answer that one.

Mr. LEIGH. Mr. Chairman, I think that sort of testimony on recommendations is something that an officer shouldn't be permitted to testify on.

Chairman PIKE. But for heaven's sake, the Turks are about to invade. We have got to do something. That is a policy recommendation from a lower level person in the State Department. Would you prohibit him from saying what he recommended?

Mr. LEIGH. I think that is for Mr. Eagleburger to answer. I think there is no reason why——

Chairman PIKE. You see, you people down in the State Department take delight in blaming the Congress for everything that has gone wrong as a result of the coup in Greece, the Turkish invasion, and the subsequent loss of the bases in Turkey. This is a terribly important issue for America, and what happens is that recommendations at lower levels of intelligence never get passed on. They don't get delivered. This is where the system breaks down, and under your guidelines you are going to prevent the committee from revealing how the system breaks down.

Mr. EAGLEBURGER. I don't believe that is correct, sir. I think we have to make distinctions between intelligence which this committee is looking into and how that intelligence is forwarded, and the policy recommendations which may accompany it.

Chairman PIKE. Intelligence has recommendations attached to it. Intelligence has predictions, for example, about what is going to happen.

Mr. HYLAND. As a general rule, the intelligence shouldn't be accompanied by policy recommendation or advice. Intelligence officers pride themselves on not trying to tailor the intelligence one

way or another, but trying to transmit it to a policymaker in its analytical form.

Chairman PIKE. Mr. McClory.

Mr. McCLODY. I think we should have an understanding at this time with respect to the committee's objective and the importance of all branches of the executive branch that have anything to do with intelligence gathering and evaluation and decisionmaking. We have to get their full cooperation in order for us to do the job we have undertaken to do, and one of the important things is to find out why we have these failures of intelligence in major areas such as in the area of the Cyprus coup and the invasion of Cyprus.

Now we have got to get at the facts regarding that, and you do receive intelligence material, documentation in the State Department. I think there is some dreadful delay sometimes in getting the information. There is a superabundance of it that bogs you down so that you have difficulty in making decisions sometimes because of the surplus of material. Is that not correct?

Mr. HYLAND. We get an enormous amount of intelligence in the State Department and try to get it to the policy level as rapidly as we can.

Mr. McCLODY. I can't overemphasize the need for our getting the intelligence that came to the State Department and also for receiving the evaluation by the State Department. You do evaluate, don't you?

Mr. HYLAND. Yes, sir.

Mr. McCLODY. And that evaluation is something that should be made known to this committee. It is not a question of options or opinions or anything like that. It is an operation which goes on which is vital for us to know in order for us to come to conclusions which can improve the intelligence community and avoid these errors that have occurred in the past.

Mr. HYLAND. Mr. McClory, it is my understanding that prior to the President's order on classified information, we had met the committee staff's requests for the material that you had asked from the State Department.

Mr. McCLODY. Let me state the President's order is not an order. The President issued a statement at a press conference.

I met yesterday with the President. I informed the President what the position of the committee was with regard to its procedures. The President has not issued an order. The President, as far as I know, has not made a final decision with respect to authorizing or not authorizing classified information under various procedures.

I do want to say that at the outset of the questioning in this interview, it seemed to me that in the question in the interview Mr. Boyatt was asked for his opinion: "Did you have an opinion as to whether or not trouble was coming?" And I think that is where we ran into the problem, because we are not interested in opinions, whether they are adverse to the decision that the State Department took or supportive of it, or whatnot. But we are interested in facts, and we are interested in the fact of the evaluation judgment.

Mr. EAGLEBURGER. I would only say that as I recall that transcript Mr. Boyatt did in fact answer the question of opinion. We have no problem with that as long as it relates to the questions you described. I would say again that we are prepared, once the classification issue is resolved, to provide all classified information you request. We are

prepared to send policy officers up here to discuss the policies decided upon by the Government, the State Department. We will be prepared to send lower level officers up here to describe the facts of intelligence.

Mr. McCLORY. Including documentation which reflects the intelligence information you are receiving from all sources?

Mr. EAGLEBURGER. Yes; that is correct.

Mr. McCLORY. I yield back the balance of my time.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Was the decision to decline giving classified information to this committee made primarily by the State Department without the active support of the CIA?

Mr. EAGLEBURGER. To provide classified information?

Mr. DELLUMS. Yes; the decision not to provide classified information.

Mr. EAGLEBURGER. No, sir. That was a decision made, as I understand it, by the President of the United States. It is not an issue that the Department of State has had anything to do with one way or the other.

Mr. DELLUMS. You never involved yourself personally in any discussions with respect to the provision of classified information to this committee? The State Department made no recommendations to the President?

Mr. EAGLEBURGER. I personally never involved myself in it. I don't know whether Mr. Hyland did. He can discuss that.

When I first knew we were not to provide classified information to this committee was when the Deputy Attorney General came before this committee and read his statement.

Mr. DELLUMS. Mr. Chairman and members of the committee, I would point to the previous testimony of the witness in response to my question, "Was there any discussion with respect to issuing classified information to this committee, prior to September 11?"—which was the day we declassified information, which came as a surprise to all members of the committee.

The gentleman's response was, "We did discuss this matter and we were involved in some discussions on September 10."

Mr. EAGLEBURGER. Either I misunderstood or we have slipped into two different issues.

Mr. DELLUMS. You asked me to read the question twice and I asked you the question twice. You said "Yes; September 10."

Mr. EAGLEBURGER. On September 10, Secretary of State Kissinger, Mr. Hyland, and I discussed the issue of State Department witnesses coming before this committee either for testimony or interviews. We did not discuss the question of whether they should discuss classified information. It was to the issue of whether it ought to be junior- and middle-level officers or policy officers.

If I misunderstood the question, I'm sorry.

Mr. DELLUMS. Mr. Chairman, I would just offer my personal feelings that they never intended to give this committee classified information with respect to the Cyprus invasion nor the coup in Portugal because I think they clearly realized that we do have extraordinary issues before us and if this committee could ever unravel the mess, many heads would roll and with regard to the State Department—if we could ever get into the Cyprus question, if we could ever get further into the question of Portugal—many, many shocking revelations would occur.

Now, I would like to ask the gentleman a question: Taking a hypothetical, intellectual approach to this matter, based upon your expertise and competence and evaluation and analysis at the policy-making stages, if you knew that certain things might occur on the island of Cyprus—that Turkey would invade, or that you had hard intelligence information that Turkey was about to invade and the policymakers had that information and did not act upon that information to preclude the invasion—could we ask for that testimony before this committee?

Mr. HYLAND. I would think so, yes, sir. In fact, most of this is already on the public record; the actions of the Government between the 15th of July and the 20th of July have been discussed by Secretary Kissinger in several public forums. Most of the main events are on the public record. There is some intelligence that is not out yet, but it is available to this committee, Mr. Dellums. The post mortem done by the intelligence community, I believe, was made available to this committee some time ago.

Mr. DELLUMS. Mr. Hyland, stipulating honesty and integrity on both sides of this matter you and I had a previous discussion informally. In that discussion—and if I am paraphrasing you incorrectly, please correct me—you indicated that if you guys are going to sit here and declassify information—and you were talking then specifically about the October war, given the sensitivity of Cyprus and the sensitivity of Portugal—we are not about to give you guys information and sit here not knowing when you are going to declassify. Isn't that a reasonable characterization of what you said which led me to believe that you feel this committee would not act responsibly with respect to that classified information? You were very, very upset that day. I was very upset, not because I thought those four words were going to mean anything, but because I was concerned whether tactically that situation would be used to put us in a situation we are in now: To engage us in a procedural fight where we cannot get into the substantive questions of what America has paid for all this intelligence and what the product of it is. Is that a fair characterization of your concern that day?

Mr. HYLAND. Could I explain my concern?

Mr. DELLUMS. I am not trying to harm you. You have the opportunity to respond.

Mr. HYLAND. My concern was that the actions of the committee by voting declassification of documents by majority vote, despite the objections of the executive branch witnesses, would lead to a situation where decisions on more current issues such as Cyprus, Portugal or what have you, could put us in a position of some jeopardy in the conduct of our foreign relations. It appeared to me on that afternoon, at least, that the committee was saying, and I suspect this is the case, that they will be the final arbiter of what is released from the documentation given by the executive branch. If we send a sensitive communication as part of the record and the committee proceeds to read that into the public record we have an enormous problem, not because we are trying to cover up anything that happened on Cyprus or Portugal or anywhere else. Most of that information is available to the committee. When the issue is resolved on classification, we are not going to hold back the intelligence that was available.

Chairman PIKE. The gentleman's time has expired.

Mr. Murphy.

Mr. MURPHY. I will yield 2 minutes of my time to Mr. Dellums and I will use the balance.

Chairman PIKE. If you will yield, are you saying you gave us information on Portugal?

Mr. HYLAND. No, sir. We have given you no information on request since the President's statement.

Chairman PIKE. We requested it before the President's statement and we did not get it, did we?

Mr. HYLAND. We were in the process of giving you that. That was lower down on the list because of your own agenda.

Mr. DELLUMS. I would just like to respond by pointing out that if we go back to September 11, what this committee was talking about was declassifying six statements that characterized the intelligence reports to the White House in the 7 days prior to the October war. Most of that information had been alluded to in the post mortem.

I would suggest to the gentleman that if you are talking about this committee declassifying on-the-spot sensitive information that would in some way affect the world situation right now, that is a totally incorrect assertion; and I, as one member of this committee, resent that.

Now, I think it was very clear, and I said to the Chairperson and I reported to the committee that I had a feeling Thursday night that Friday you folks were going to come in here and say we are not going to give you any more information.

I personally believe that our declassifying this material gave you then greater justification for doing what you wanted to do in the first place and that would in some way stymie the ability of this committee to go as far as our wanting or needing to go forward with our legislative responsibilities. We have a mandate not only to investigate but to report legislative recommendations on correcting a matter.

That was the issue that has been used as a red herring here not to provide us with sensitive information to allow us to do our jobs. I believe if you walk it all the way out, it goes back to the State Department and interestingly enough, not at this moment, back to Mr. Colby.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Mr. Eagleburger, this morning there has been quite a bit of testimony about the President's order. Would you give me a chronological history of this order—when and where and if it was written and who has a copy of it? If it was oral, tell me whom he talked to.

Mr. EAGLEBURGER. Mr. Murphy, I do not have detailed knowledge of that subject. As I said earlier, my first knowledge of the order was when the Assistant Attorney General appeared before this committee and read his statement. I have since then been told by the Secretary of State that the President issued the order. I know nothing more about it than that. We have been operating on the assumption that the Assistant Attorney General would not come up here and testify before this committee and read that statement if he had not been so ordered by the President of the United States to do so.

Mr. MURPHY. Are you talking about the statement Assistant Attorney General Rex Lee read?

Mr. EAGLEBURGER. Yes, sir.

Mr. MURPHY. He admitted under questioning by me that he talked to Mr. Rogovin and Mr. Buchen of the White House, and that they talked about information that Mr. Rogovin related from an executive session in violation of our own rules.

You people cannot have it both ways. You cannot be violating the rules of the committee and then come in and tell us what your rules are going to be.

Mr. EAGLEBURGER. Mr. Murphy, we are operating, to the best of my knowledge, under an order of the President of the United States.

Mr. MURPHY. You don't know if it's written or oral?

Mr. EAGLEBURGER. All I know is what I read.

Mr. MURPHY. You don't know whether it is written or oral?

Mr. EAGLEBURGER. I have no idea.

Mr. MURPHY. Then why don't you say so?

Mr. HYLAND. An Assistant Attorney General would not come down here and made up an order from the President.

Mr. MURPHY. The Assistant Attorney General didn't know where it all initiated from. All he could tell us is that he talked to Mr. Rogovin in the morning about it. This all appeared to him overnight, according to his testimony.

Mr. EAGLEBURGER. If you have a question of whether the President issued an order, I would suggest that you ask the White House.

Mr. MURPHY. I would like to see if it is written.

Chairman PIKE. I wrote a letter to the White House asking for a copy of the order, and nobody sent me a copy of it.

[Correspondence between the chairman, General Scowcraft, and Mr. Hyland relating to the President's order is printed on pages 895-900 of the appendixes of these hearings.]

Mr. MURPHY. It seems to me if we are going to be subject to orders from the White House, we should get a copy of them. We don't know what the nature of the order is. Now you are getting calls from your boss, Kissinger, that he heard of the order, and he does not tell you whether it is written or oral. It seems to me that is kind of a flimsy way to operate.

Mr. EAGLEBURGER. I would find it difficult to understand a circumstance in which the Secretary tells me there is an order by the President, and I would say I wouldn't follow it unless you give it to me in writing.

Mr. MURPHY. You could anticipate you would be asked about it up here, couldn't you?

Mr. EAGLEBURGER. Frankly, I did not.

Mr. MURPHY. You were going to tell us about an order the President gave to Kissinger and he in turn gave to you, and you did not expect to be questioned about it?

Mr. EAGLEBURGER. I could not conceive of the Assistant Attorney General coming before this committee and making up a Presidential order.

Mr. MURPHY. That is all the questions I have.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Mr. Eagleburger, along that line you received an order from your superior, the Secretary of State, with regard to classified material; is that correct?

Mr. EAGLEBURGER. I would not characterize it as an order. As I recall it, when he and I were discussing the subject at one point, he

said, "The President has said there would be no more release of classified information to the committee until the issue was resolved."

I don't recall that it was a direct order from the Secretary to me.

Mr. TREEN. But the Secretary, who is your superior, advised you that the President had made that directive, correct?

Mr. EAGLEBURGER. That is correct.

Mr. TREEN. Let me try to understand what you are willing to do through lesser officials and that which you are willing to do through senior officials under your guidelines.

You have stated that, assuming other things are worked out, the facts of intelligence may be related by any personnel within the Department. You have also said that the transmission of that information is a fact which could be related; that is, that operative A could testify that he is in possession or was in possession of intelligence facts 1, 2, 3, 4, 5, et cetera, and that he transmitted those intelligence facts to Persons A, B, C, et cetera, and also necessarily that would include to whom he did not transmit information. All of that would be factual information and could be, under your suggested procedure, given to the committee by anyone in possession of those facts within the State Department.

Mr. EAGLEBURGER. That is correct.

Mr. TREEN. How about the analysis of the raw intelligence data that a professional analyst makes? Would that fall within opinion or advice, or would that fall within factual revelation—his analysis of that?

Mr. EAGLEBURGER. My view is that that would fall within the factual presentation. Is that correct, Mr. Hyland?

Mr. HYLAND. Yes, sir.

Mr. TREEN. So any personnel within the Department can tell us what raw data they had within their possession, whether it came from a satellite, whether it was a communications intercept, whether it was a statement related by an operative on the scene, et cetera. That can come to us through any individual who has it in his possession.

Mr. EAGLEBURGER. That is correct.

Mr. TREEN. Also, the analysis and the evaluation of data, as, for example, whether a source is considered good, may come to us from any personnel in the State Department. The only thing under your proposal that would be transmitted to us by senior officials would be the policy decisions based upon the raw data and the analysis; is that correct?

Mr. EAGLEBURGER. That is correct, sir.

Mr. TREEN. Well, I am not certain that you have the right to impose that procedure, but at the moment I for one am willing to state that I see no reason why we cannot carry out our function under that procedure. Thank you.

Mr. EAGLEBURGER. Thank you, sir.

Chairman PIKE. Does the gentleman yield back the balance of his time?

Mr. TREEN. I yield back the balance of the time.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Hyland, you have raised an interesting point. That is how to distinguish between the best witness and the best evidence. Of course, I think that is again part of what we are trying to get to. Perhaps if

I could ask Mr. Eagleburger: By your statement of principle in three parts this morning, would we be prohibited from asking what you define as a middle-level analyst, what analysis was sent to his superior, or more precisely, to a policymaker? And then also could we ask what they may or may not have tried to send but in their individual opinion—that is, the individual opinion of that middle-level analyst—was he prevented from doing so by external or internal circumstances?

Mr. EAGLEBURGER. Certainly on the first half of that I think we would have no problem and I don't think we would on the second half.

Do you, Mr. Leigh? I don't think so.

Mr. HAYES. If that is the case, then would there be any problem if we also questioned the policymaker on the same points?

For example, assuming we had that middle-level analyst and he testified that he in the meeting had to cave in, for example, to somebody else's judgment as to whether or not that should be passed on, could we then go to that policymaker and discuss that process with him?

Mr. EAGLEBURGER. Except for the fact that I worry about the use of the words "cave in," I see no problems.

Mr. HAYES. I am going back to the Sam Adams thing, assuming he was a State Department guy instead of a CIA guy. Well, I think we have come full circle from our original discussion, yours and mine, and we seem to be right back on the question of authority. We are on the question of our authority as a committee to ask the questions and your authority to tell them not to answer it.

Would each one of these be an individualized decision on the part of State? Would we have to be involved in submission of those questions so that you could determine whether or not we were into the middle level or policy level?

Mr. EAGLEBURGER. I should think not, Mr. Hayes. I think that is partly the purpose of insisting there is someone present with him to advise him on those sorts of issues. But I don't think we would have to go through this in written questions first. It is much easier, obviously, when you have the policy level person up here. The restrictions would be far less.

Mr. HAYES. Do you see any problem that may have been implicit in Mr. McClory's statement that you might, by this procedure, be encroaching rather heavily on the prerogatives of the Congress to decide from whom and how information would be garnered?

Mr. EAGLEBURGER. Mr. Hayes, I would hope we are not encroaching upon the prerogatives of the Congress. I don't think so. I would say to the degree there are principles in conflict, you have your set of principles you have to try to defend and forward and I understand that. We have some on our side that we have to try to defend and forward.

Mr. HAYES. Do you know of any suggestion or group of suggestions that we could go to to decide how we are going to resolve that impasse of principles?

Mr. EAGLEBURGER. Assume for a moment we set the classification issue aside. I think there is no question that we would be prepared to sit down with Mr. Field or anyone else this committee might suggest and try to work out in detail the sorts of guidelines we have been trying to discuss here now—on the assumption the classification issue is out of the way.

Mr. HYLAND. Could I make an addition to that?

That would be a procedure in which the area of interest was identified. Let's say Cyprus, and the Department of State was allowed or permitted to send the witness we felt had the policy responsibility. If, after that testimony or interview or whatever, the committee feels that more information must be developed, that other witnesses should be called, that is open for discussion. But we would like to do what we do with most committees in Congress, and that is to send down the person that we think bears the policy level responsibility and who has the widest possible knowledge and vision of the subject.

Naturally, the ideal person might be Secretary Kissinger, but he cannot appear at every committee every day. But assistant secretaries do have this responsibility in the Department and we have offered several times to your staff to have the Assistant Secretary for European Affairs come down.

Mr. HAYES. Would the repository of a few seconds yield, with permission of the Chair?

Chairman PIKE. How much time?

Mr. LEHMAN. Thirty seconds.

Mr. HAYES. The setting aside of the classification problem would be the responsibility of the President. Let's assume he did set that aside and say, "Classification is no problem, go ahead." Would we then be obligated to begin to deal with you in the State Department on your matter of three principles and would we have to get involved in the kind of questioning that I had when we began this discussion?

Mr. EAGLEBURGER. Two of the three principles. The classification is a different one. I think there is no question that the two principles become at issue at that point. I would like to reinforce what Mr. Hyland said. We will send down what we think is the best witness. If you don't think that is enough, we will be prepared to sit down and discuss what other witnesses you want.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. Beyond the question of the investigation by this committee into the intelligence community—and perhaps even beyond the question of classified or unclassified documents, and different decisions with respect to executive privilege—my problem, and I think a number of our colleagues' problem, is that we are asked to make legislative decisions—up and down votes—on such questions as the forthcoming compromise legislation in regard to releasing arms to Turkey.

I have already voted several times on this same issue. I went to the White House and they had the nice war maps. The Secretary pointed out different bases and installations we would lose if we did not vote for a continuation of aid to Turkey. But I did not know and could not make a valid decision because I did not know what was our commitment or our foreign policy to the Greek colonels or the Turkish Government—nor what would happen if the invasion took place. I would like to support our foreign policy. I would like to support our State Department. But I have been voting on the most important decisions on the basis of the most fragmentary kind of information.

We have the matters in which our State Department has become involved—various parts of the world where we are dealing with two of our allies at the same time and we become committed in various degrees to both of them. We are asked to make such decisions as the

release of arms to Turkey; and I don't know one thing about how these commitments are made, what the obligations are and what our position was before this particular crisis and the invasion of Cyprus.

I think it is both unfair and unwise for your Department to be so restrictive in its information toward Congress as not to permit us to make the kind of decisions that the American people are entitled to have made for them and entitled to know about for the welfare of our own country and the welfare of the world.

I think this is a broad statement but that is my problem.

I think what you are trying to do here is so counter-productive that it really tears us down—the way you are trying to deal with this committee in its endeavor to help the intelligence community and help the diplomatic service to do a better job for the people of this country.

Mr. EAGLEBURGER. May I respond? I would hope that you would get no dispute from any of us at this table as to the right of this committee and the Congress to ask any of us for information. I hope the issue we are raising here is clearly understood not to be that issue but rather from whom you get the information, not the information itself.

I come back to say again that I understand that concern. I understand the principles involved in what you have said. I only ask that you understand that from my perspective as responsible for the conduct and management of the Department of State and its employees I feel I have an obligation to them and particularly the junior officers of the Department of State to assure them certain rights and protection in the process of development of foreign policy. It is not that the policy level official cannot give you the information you asked for.

Mr. LEHMAN. We are not a totalitarian country and they are not going to disappear overnight, no matter what happens to them. Are we entitled to see, as members of this committee, National Security Staff memoranda for example? If I had this information, I could make a decision that I felt was substantial and decisive in regard to the forthcoming vote and the previous votes. I want to help you, but I need data that I can base my decision on, rather than fragmentary information that, "This is going to happen," or "that is going to happen." I need information as to what the commitment of your Department has been and on what data that is based.

Mr. McCLORY. Will you yield?

Mr. LEHMAN. Yes.

Mr. McCLORY. This whole controversy arose with regard to interrogating Mr. Boyatt. He was in Cyprus before the coup; was he not?

Mr. EAGLEBURGER. He was in Cyprus before the coup and at the Cyprus desk at the State Department at the time of the coup, that is correct.

Mr. McCLORY. He would be a very knowledgeable person, correct?

Mr. EAGLEBURGER. That is correct.

Chairman PIKE. The time of the gentleman from Florida has expired as to your current 5 minutes. You still have 5 minutes remaining from an earlier withholding if you want to use it at this time.

Mr. LEHMAN. I will keep it. If I need it later, I will use part of it.

Chairman PIKE. The gentleman is going to reserve his time.

Mr. McCLORY. I don't know if I asked him to yield that 30 seconds.

Mr. LEHMAN. I will yield that 30 seconds to Mr. McClory.

Mr. McCLORY. There was something you wanted to respond to.

Mr. EAGLEBURGER. I wanted to comment on the commitments that were made. The place to get that information is from the Assistant Secretary for European Affairs. He is the man who can discuss that sort of a question with the perspective of the broad policy level man at the top of his bureau.

Mr. McCLORY. This committee is going to decide where we are going to get the facts. We want the facts from the person we think has knowledge of the facts. In this case we think Mr. Boyatt may have the facts we want.

Chairman PIKE. Would the gentleman from Florida yield 30 seconds to the chairman?

Mr. LEHMAN. I will yield 35 seconds to the chairman.

Chairman PIKE. I think the gentleman from Florida has raised a very fundamental issue. The fact of the matter is that at the time of the Vietnamese Peace Agreement no part of Congress, to the best of my knowledge, was aware of the letter from Richard Nixon to Mr. Thieu which said in essence, "If you will accept this agreement, we will respond with full force should the settlement be violated by North Vietnam."

Now this is exactly the kind of situation that the gentleman from Florida is talking about. It is concealed from Congress not by the middle-level people, but by the highest level people.

Mr. EAGLEBURGER. Mr. Chairman, I might make a guess that middle-level people would not have known of that commitment either.

Chairman PIKE. Frankly, I am not as concerned about who knows about it as about who is hiding it.

Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

I sense that the committee is kind of punching at a balloon over here and we are not really focusing on the issues. For the purpose of the record, I want to clarify what your position may be. I don't quite understand it. Essentially we have two issues here. One is the question of classification and the ability of this committee or any other committee in Congress to classify or declassify certain kinds of information. Now, you have said to the committee this morning that you will not provide the committee with any classified information of any kind from any person until the classification problems have been worked out.

Mr. EAGLEBURGER. By order of the President of the United States we are forbidden to provide any classified information to this committee until that issue is resolved; yes, sir.

Mr. KASTEN. What is the specific legal and/or constitutional basis for that refusal that you are making?

Mr. EAGLEBURGER. That we are making?

Mr. KASTEN. On the question of classification.

Mr. EAGLEBURGER. The refusal we are making, in terms of our legal justification for doing it, is because it is an order given to us by the President of the United States.

As to the further legality you will have to talk to the White House, I think.

Mr. KASTEN. That is the order we were talking about earlier in the statement from Mr. Murphy. It is your understanding that that is an official order of the President of the United States, although you are unsure as to its form.

Mr. EAGLEBURGER. That is correct, sir.

Mr. KASTEN. Now on the other question of whether or not this committee can discuss facts, policies, decisions, whatever, with different levels in your Department, that is a separate question that has nothing to do with the classification question whatever, is that right?

Mr. EAGLEBURGER. That is correct.

Mr. KASTEN. It is your position that the committee should receive certain kinds of information from senior officials and certain kinds of information from junior and middle-level officials.

Mr. EAGLEBURGER. That is correct.

Mr. KASTEN. And that you or the Secretary of State are to judge which officials fall at which level and also which officials can testify; is that correct?

Mr. EAGLEBURGER. That is correct, sir.

Mr. KASTEN. Would you rather restate that for me? It didn't seem you were quite happy with what I said. You have the ability to classify officials. You were not able to tell the chairman who was senior and who was not senior.

Mr. EAGLEBURGER. I tried to describe what officials we considered policy-level officials. I now have for the record the number of them if that is of interest. Mr. Leigh, would you care to restate the statement?

Mr. LEIGH. No.

Mr. KASTEN. That point I think is very important. It is not, in your opinion, the committee's decision to decide who is a senior official and who is a junior official. That, in your opinion, is your decision; is that right?

Mr. EAGLEBURGER. It is our view you can call anyone you want before this committee. We will have to decide whether he falls within the policy level and the middle and junior levels of officers of the Foreign Service.

Mr. KASTEN. Would it be conceivable that on a given level somebody could be thought of as a policy level senior official and on another level that same person could be thought of as a middle or junior official? It seems to me that could be possible.

Mr. EAGLEBURGER. What we would generally class as a middle-level officer maybe in an unusual circumstance in fact was a policy-level officer. Under those circumstances he would come up here as a policy-level officer. That is conceivable.

Mr. KASTEN. But you feel you and the Secretary of State are able to make those decisions and this committee is unable to make those decisions; is that right?

Mr. EAGLEBURGER. In the terms in which you have put it, that is correct.

Mr. KASTEN. As to who is a senior-, junior-, or middle-level official?

Mr. EAGLEBURGER. It seems to us we are in the best position to decide which officer can go to the heart of the sort of questions you are going to want to ask.

Bill?

Mr. HYLAND. I just wanted to add that there are in the Department certain officials at certain levels, generally assistant secretaries, who bear the responsibility for a larger bureau and the operation of that bureau. In general they are the best witnesses. We have offered to send those witnesses down here for testimony.

Mr. KASTEN. If a person were in a certain position—let's say a senior policy position, a policy-level position—and then through an administrative change that you or the Secretary of State made, he was changed to another position, then you would have taken him out of one category and put him into another; is that it?

Mr. EAGLEBURGER. No; I'm not implying that at all. For example, if Mr. X made the policy on Cyprus at the time you had under investigation and later we had moved him to another level, then we would let him come before you because he would have been the policy officer at the time you were investigating.

Mr. KASTEN. Have there been any changes in Mr. Boyatt's role?

Mr. EAGLEBURGER. There have been changes in his assignment. My contention is that he was not a policy-level officer at the time he was on the Cyprus desk.

Mr. KASTEN. Who was the Chief of the Cyprus desk?

Mr. EAGLEBURGER. Boyatt was Chief of the Cyprus desk.

Chairman PIKE. Mr. Kasten reminded me that before he went to another meeting briefly he had asked that his time in the last round be reserved. Mr. Kasten is recognized for 5 minutes.

Mr. KASTEN. I want to go back to the point I was discussing earlier.

Mr. Boyatt was the Chief of the Cyprus desk. He would therefore fall into the category of issues having to do with Cyprus as a senior official, would he not? Wouldn't he have, in Mr. Hyland's words, the most knowledge? He would have the most detailed information, et cetera, and he would probably be the person this committee would want very much to speak with. In your opinion that is not correct?

Mr. EAGLEBURGER. No, Mr. Kasten.

Mr. Boyatt is a fine Foreign Service officer. He is a friend of mine and I respect him greatly. He was not the man who made the policy for Cyprus. That was made at a level above him. I would have no problem with Mr. Boyatt coming down here to discuss facts. When you get into issues going into the making of policy, that, I suggest, goes to the Assistant Secretary for European Affairs who was the first policy officer responsible for the country.

Mr. KASTEN. How is it that you or the Secretary of State is best able to decide that question and not this committee or not another committee or not a Member of Congress?

Mr. EAGLEBURGER. Well, in the first instance, Mr. Kasten, because we know where the policy level lies within the Department. We deal with it every day. Setting that issue aside for a moment, we have a problem which I have tried to identify in my statement as to what junior- and middle-level officers ought to be asked to come before these committees to testify to.

Mr. KASTEN. Could you provide for the record, or maybe the counsel could, the specific legal and/or constitutional basis for that particular statement? In other words, the basis that you are using for withholding the testimony of witnesses of the executive branch and specifically of the State Department on all these matters which this committee is entitled to investigate. What is the specific legal and/or constitutional basis for this?

Mr. EAGLEBURGER. We will provide it for the record.

Mr. KASTEN. Thank you very much.

[NOTE.—A memorandum of law, provided to the committee by the State Department on October 3, 1975, is printed on pages 903-909 of the appendixes of these hearings.]

Chairman PIKE. Mr. Lehman, do you want to use whatever time you may have remaining?

Mr. LEHMAN. Without belaboring the same subject, intuitively I am often forced to feel that in protecting your middle levels or whatever level you are talking about, you are more concerned with job security, more concerned with your image, and more concerned with possible future promotional opportunities being wiped out by bad decisionmaking or not being on the ball than you are actually for the security of the country or basically the threats to these various individuals.

I think that if you do have this information available for us, we are not out to get anybody. The Congress is not out to punish anybody. I think if we could have this information, we would be able to perform better not only for ourselves, but for you and to give the kind of support to the foreign policy—whatever that is these days—that we so badly need.

Thank you very much. I yield back the balance of my time.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I want to add, neither this committee nor any other committee of Congress can accept the assertion on paragraph 3. We are talking about the assertion of power of a Secretary of a department to restrict information coming to a congressional committee. Let's change this to say, instead of saying the Secretary of State, let's insert, for example, the Secretary of Agriculture. "The interviewees are to decline by order of the Secretary of Agriculture to give information." That is the claim of power of the Eagleburger memorandum. No committee of Congress can accept this kind of claim. No committee of Congress can accept this kind of restriction. They say that this is something that they have to decide—who is in a position to give information. There is legitimacy to that argument. But the problem arises that people in high positions have been known to lie. Committees of the Congress have to have the right to pursue wherever they feel it is necessary to go to get the information they need to have.

This kind of a doctrine could be used to intimidate Government employees. It can be used to hide criminal activity and used to cover up incompetence. It is the worst kind of a claim I have come in contact with on the part of a department head. The Secretary of Agriculture or Secretary of Interior could assert the same kind of power.

It is an absurd claim, and I hope it is rejected by this committee.

Mr. EAGLEBURGER. May I make one comment on that?

Chairman PIKE. Certainly.

Mr. EAGLEBURGER. We look at the issue of an abuse category, whether there is a violation of the law, as quite a different category. Obviously, that falls under a different set of rules.

Chairman PIKE. Mr. Field.

Mr. FIELD. Thank you, Mr. Chairman.

I concur with Mr. Johnson. I would like to explore this point a little further.

Mr. Leigh, I suspect I understand now why you gave the committee a bunch of numbers rather than citing the law. As I understand your testimony, you cited title 22, section 2651, as authority for the Secretary of State to withhold testimony of midlevel officials. Let me read it:

Establishment of Department. There shall be at the seat of Government an executive department to be known as the Department of State, and a Secretary of State, who shall be the head thereof.

It says absolutely nothing about the authority of the Secretary of State to order employees of the Department of State not to give information to Congress.

You cited section 2657. This is even more interesting. It is entitled "Custody of Seals and Property":

The Secretary of State shall have the custody and charge of the Seal of the Department of State and all the books, records, papers, furniture, fixtures, and other property which on June 22, 1874, remained in and appertained to the Department or were thereafter acquired for it.

I don't see how in God's name that can give you authority to order somebody not to testify before this committee.

Section 2658, "Rules and regulations; promulgations by Secretary; delegation of authority. The Secretary of State may promulgate such rules and regulations as may be necessary to carry out the functions now or hereafter vested in the Secretary of State or the Department of State, * * *." It goes on in that fashion.

Section 2664, "Distribution of duties of officers, clerks, and employees. The Secretary of State may prescribe duties for the Assistant Secretaries and clerks of bureaus, as well as for all other employees in the Department, and may make changes and transfers therein, when in his judgment it becomes necessary."

These are the laws that you cited as authority to tell interviewees to decline to give information which would disclose options considered by or recommended to more senior officers. You then cited as precedent an incident which occurred in 1959 which, according to our research, provoked executive privilege. It did not involve any of these laws you cited. These laws have never been used as authority to withhold information from Congress and order a witness not to testify under oath. Isn't that correct?

Mr. LEIGH. No.

Mr. FIELD. Can you explain that?

Mr. LEIGH. You have apparently misunderstood what Mr. Eagleburger has been saying. He said he was acting pursuant to the authority of the Secretary of State and his directions.

Mr. FIELD. What authority does the Secretary of State invoke? What laws does he invoke? You gave these laws.

Mr. LEIGH. Don't you think the Secretary of State can direct a Foreign Service officer to serve in Paris or London?

Mr. FIELD. We are asking whether or not he can order somebody not to testify under oath.

Mr. LEIGH. He can order someone as to what his duties are. That is what section 2664 says. Now naturally, in 1959 I didn't cite these provisions. I was then in the Department of Defense. But I assure you that every executive department head has the same kind of authority which Secretary Kissinger has in this respect as to what the members of the Department may do.

Mr. FIELD. We are not talking about ordering someone to undertake certain assignments. We are talking about whether or not he can order someone to not testify under oath.

Mr. LEIGH. Can he tell him what he can say to a foreign government in connection with his duties?

Mr. FIELD. This is not a foreign government, Mr. Leigh. There is a very important distinction. I think that gets right to the heart of the matter here. Isn't it a fact that last week—

Mr. LEIGH. Can I finish the answer? The answer here really is the principle Mr. Eagleburger has been talking about since 10 o'clock this morning. The question is whether junior officers are to be exposed to the kind of interrogation which tags them with having given perhaps immature advice after which it becomes a notorious public fact which then destroys their career. The trouble about this is that it does not look as though anybody on this committee is trying to make an issue out of that, to make him a scapegoat. But in the process of large bureaucracies these things count.

What Mr. Eagleburger is trying to protect is the freedom of officers to speak their views without the fear that they will be subsequently called and questioned so that they trim their recommendations to their superiors in such a way the superiors are misled. This is a very important principle. It is the one Mr. McClory was reading from the Harvard Law Review.

Mr. FIELD. I understand the problem. You are here as a lawyer. I am asking you for the legal authority for this.

I am not asking what the problem is. What is the legal authority? Is it not executive privilege?

Mr. LEIGH. I have not said executive privilege.

Mr. FIELD. I am searching for some authority by which he makes this order.

Mr. LEIGH. It is for the President to decide whether he wishes to invoke executive privilege. The Secretary of State has the authority to tell the people within the State Department what their position shall be. I don't wish to elaborate on that.

It is as simple as that.

Chairman PIKE. The time of the gentleman has expired. The House is now in session. If the committee will indulge the Chair a little bit, it seems it is time we move on to something else. It is time that we move on to the issue of how we shall treat the refusal of the executive branch—operating under some "order" which no one has apparently seen or read, but which may have been heard by someone—to provide information.

The Chair is going to suggest that this afternoon the committee reconvene at 2 o'clock. And what the Chair is going to recommend is that it is time that this committee went back to the full House of Representatives and asked the House to either give us a vote of confidence or tell us that we have gone too far. It is my feeling that the executive branch is today in contempt of Congress. It is my feeling also that we should move carefully, deliberately, but steadily to determine that issue. What I am going to propose is that we ask the entire House of Representatives to agree with us that certain information we have requested from the executive branch, and which has been offered to me alone—but not to the members of the committee

and not to the House of Representatives—is in fact necessary to the conduct of congressional oversight over the intelligence community. That will be the nature of our discussion this afternoon.

Mr. McClory.

Mr. McClory. Mr. Chairman, you and I have discussed the subject, informally at least, of possible further procedure including the procedure you outlined of going to the House of Representatives for some kind of action. I would only urge upon you, Mr. Chairman, that the meeting of the committee to consider this should not be before Monday. I say that because, as I indicated earlier here, I reported directly yesterday to the President a summary of the procedures that this committee has adopted. I do expect to have some word from the White House, from the administration, perhaps later today or perhaps tomorrow, in response to the report that I gave directly to the President yesterday. I think it would be only fair. I think and I hope that the subject of further proceedings would be unnecessary as a result of either acquiescence in the procedures that we have adopted or at least to review what the position of the administration is with respect to this issue.

Chairman PIKE. Mr. McClory, I would be tempted to agree with you except that I think the game plan of the executive branch essentially amounts to, "If we don't stop them, let's at least delay them until their charter expires." Let me go on a little bit.

I wholly share Mr. Johnson's views on the proposition which was presented here today. I think that we are in a "Catch-22" situation: "If we clear up the problem of classification, we in the executive branch will find some other means to deny you the information you want." I think that the four words which were released by this committee were seized upon, not because they shook the foundations of the empire, but because the investigation of this committee, if it had proceeded as it was scheduled to do, might have shown that the Emperor wore no clothes. It does seem to me that additional delay is not particularly desirable.

Mr. McClory. Mr. Chairman, may I add this further? Now you are suggesting a meeting this afternoon with respect to a subject that is certainly not entirely clear to me. I have had no opportunity to discuss the purpose of the meeting even with the other Republican members. I would much prefer to have information with respect to the precise action which the chairman is going to recommend. I think it is only fair. I think it is fair under the rules that the committee has adopted that we be given at least 24 hours' notice for the purpose of the meeting.

Chairman PIKE. You will concede that I did discuss the purpose of the meeting with you yesterday afternoon.

Mr. McClory. You did. You and I have discussed this in some detail and with counsel. I stated that very emphatically, but I have not had the opportunity to communicate this information to the other members. It would be very awkward for us.

Chairman PIKE. I recognize the gentleman's problem. The committee will stand in recess until 10 a.m. Monday morning.

Mr. McClory. Thank you very much, Mr. Chairman.

[Whereupon, at 12:10 p.m., the committee adjourned to reconvene at 10 a.m., Monday, Sept. 29, 1975.]

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THE 1974 CYPRUS CRISIS

TUESDAY, SEPTEMBER 30, 1975

HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; and Gregory G. Rushford, investigator.

Chairman PIKE. The committee will come to order.

Our principal witness this morning will be Mr. Taylor G. Belcher, the former Ambassador to Cyprus.

Ambassador Belcher, we are very pleased to have you here and you may proceed with your statement.

STATEMENT OF TAYLOR G. BELCHER, FORMER AMBASSADOR TO CYPRUS, ACCOMPANIED BY KEITH CLARK, NATIONAL INTELLIGENCE OFFICER, WESTERN EUROPE, CIA; MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE; WILLIAM G. HYLAND, DIRECTOR, BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE; ARTHUR HARTMAN, ASSISTANT SECRETARY OF STATE, EUROPEAN AFFAIRS; AND THOMAS B. BOYATT, FOREIGN SERVICE OFFICER, DEPARTMENT OF STATE

Mr. BELCHER. Mr. Chairman, first of all I would like to say this is the first time I have read this statement. I dictated it last night, so if there are some mistakes in pronunciation or a word is omitted or something, forgive me.

Chairman PIKE. We are a very understanding committee. All of the witnesses who have appeared before us will testify that we are always very sympathetic to the problems of our witnesses.

Please proceed, Mr. Belcher.

Mr. BELCHER. Mr. Chairman, it is a pleasure to be back in Washington. For the record, my name is Taylor G. Belcher. I was Ambassador in Cyprus from 1964 to 1969, and prior to that time I had served there when it was still a British colony—from 1957 until 1960. My earlier service in the island encompassed the period of the EOKA violence, and the constructive period of discussions of its constitution,

and ended with the independence of the island when we assigned our first Ambassador there.

When I left Cyprus in 1969, I was assigned as Ambassador to Peru where I served for 5 years, until 1974. During this period, naturally, I kept up as closely as I could with events on the island. Having spent 8 years there and having many friends there, both my wife and I were extremely interested in the future of the island.

We visited Cyprus on a personal basis—for pleasure—to see our friends during the period May–June 1974. This was a time of considerable tension. There had been various attempts on Makarios' life. There was a suspicion that plots were being hatched and that there would be further attempts to depose the President. There was much talk of coups, organized by EOKA-B and by the Greek intelligence service, KYP. While we were there very senior officials in the Greek-Cypriot Government spoke of possible coups and alleged that there was a considerable involvement on the part of the U.S. Government in backing Greek efforts to unseat Makarios.

I was told in very strong terms that there was documentary evidence available to the Government of Cyprus that the CIA was financing the EOKA-B organization through money passed through Ioannidis in Athens, who then passed it on to the Greek National Guard offices who were working with the EOKA-B in Cyprus.

The outcome was, in effect, to leave the Greeks in effective control of the Government in Nicosia. This was too perilous for our overall interests, and we should have done something about it at that time.

Chairman PIKE. Let me suggest at this point we have a vote going on over on the floor. The committee will stand in recess until 10:30.

[Whereupon, at 10:15 a.m., the committee recessed, reconvening at 10:30 a.m.]

Chairman PIKE. Proceed, sir.

Mr. BELCHER. Mr. Chairman, I will start off with the first letter I sent to the Times on Friday, the 19th of July:

As former Ambassador and Consul General when the British were still holding the ring, I have come to the conviction that, whatever the shortcomings may have been of the recently deposed regime, in it lay the best hope for the peaceful future of the island.

The fact that the present regime is so closely linked with, if not dependent on, orders from Athens is a disruptive element which could well lead to the Turkish intervention we have all tried to avoid since the breakdown in December 1963. If, as it seems, the principal preoccupation of Secretary Kissinger is the continued access to our defense facilities in Greece, then surely a major factor in his considerations must be how far Greek unilateral action can be allowed to go in this terribly sensitive area without risking Turkish counteraction under the cover of the terms of the 1960 agreements.

The possibility of even greater losses involving NATO's southern flank is ever present without the relatively stabilizing element of the Archbishop and an independent Cyprus.

The allegations in news stories published July 18th that certain U.S. officials have referred to Makarios as the Castro of the Mediterranean leave me incredulous. This is a new development since my departure from the scene in 1969.

After many conversations over a period of 8 years with the Archbishop, I am convinced that he is unalterably opposed to communism. His primary interest, aside from his temporal role as Chief of State, is in the welfare of the Cypriot Orthodox Church and the finances of the Archbishopry. He is well aware of the fact that communism would mean disaster for these interests. Of course, he is and has been playing the ever dangerous game of attempting to "use" the Communists, both local and international, to strengthen his position. One can name various other leaders of today who use the same tactics (viz. Peru, my last post as Ambassador).

I would hope that the administration will reach the conclusion that our most feasible "option" in the present crisis is to stand fast with the British in confrontation with the Greek military. Fortunately, for whatever motives, Soviet policy happens to coincide.

Greece must leave Cyprus to the Cypriots and we should use our considerable influence to insure such an outcome. To leave the Greeks in effective control of the government in Nicosia is too perilous for our overall interests in the area.

The Turks invaded on Saturday, the 20th, and in view of the fact that the letter could not be put into the paper until early in the week—because that particular page is made up several days in advance—it was decided not to publish my views. At a later date, July of this year, I wrote again to the Times stating as follows:

The Turkish Government's decision on July 25 to limit U.S. base activity drastically was, as Secretary Kissinger said, a sad decision—but hardly surprising. The administration was correct in opposing the arms embargo. The Greek lobby and those Congressmen who, for one reason or another, supported the arms embargo, were self-defeating. I have argued against the embargo with Greek Americans, Cypriot Americans, and Cypriot and Greek representatives in Washington. The congressional action and Turkish reaction makes us all losers.

The United States and NATO have lost invaluable bases in Turkey. The Greeks have at best postponed even further the chance of a reasonable solution or even ameliorization of the Cyprus tragedy. The Cypriots continue in their misery and stagnation.

But how did we ever get into this cul-de-sac? Did it start and finish with Makarios' brinksmanship with the Greek Colonels and Ioannides? Or is there some responsibility on the 7th floor of State? It is a fact that as early as April of 1974 "working level" officers in State began their useless efforts to move Secretary Kissinger to action to avert Greek moves against Makarios. These efforts went on for weeks before the Secretary was finally persuaded to instruct Ambassador Tasca to warn Ioannidis not to be so foolish as to create a fait accompli which would force the Turks to move to protect their Cypriot brothers.

In any event, Ambassador Tasca never did see strongman Ioannidis "just a cop"; reportedly he sent a middle-grade CIA liaison officer to deliver the Secretary's message. The implication was obvious. It was even more so to both Greeks and Turks when we did nothing to denounce the imposition of Sampson, the Athens-sponsored puppet President who, to the Turks, personified de facto Enosis.

To the Cypriot supporters of Makarios, the United States was the villain of the piece. Senior officials told me in June 1974 they "knew" that the CIA was paying Ioannidis to subsidize EOKA-B in order to get rid of "the Castro of the Mediterranean." In fact, they said the bag man was a CIA man familiar with Cyprus. No denials or expressions of incredulity on my part, mixed with valid questions as to how on earth this could serve U.S. interests, would shake their conviction that we wanted Makarios out. No one imagined that scenario as it then developed.

But the key to the tragedy which lives on in that lovely island lies in the Turkish conviction that the U.S., at the very least, acquiesced in the Athens take-over; at the very least did nothing to prevent it, and at least was happy to see Makarios out.

Some say that the Turks were only waiting for such an opportunity. This could be. Anyway, they did it—whatever their motivation. And now they control 40 percent of the island and show no indications of looking for a reasonable solution to the human tragedy we see before us.

The misguided judgment of good friends whom I otherwise hold in high esteem has influenced our Congress to act against our and their best interests. The continued ban on arms sales helps no one except NATO adversaries.

The Congress bears a heavy responsibility for this grave damage to our security interest; the lobbyists bear perhaps an even greater one. But the errors of judgment on the 7th floor of State in the spring of 1974 will and should haunt those who ignored Turkish sensibilities, while seeking to preserve a Greek relationship founded on the shifting sands of a Fascist dictatorship.

The decisions of May, June and July 1974 have grossly damaged our interest in Greece, in Turkey, and in Cyprus. They have damaged NATO's effectiveness. They have contributed to the destruction of the way of life of tens of thousands of Cypriots. The administration is and should be fighting this belated battle to find a way out of a mutual dilemma.

Mr. Chairman, this letter was not published either. It was too long and I later revised it. The revision appeared on September 16, 1965. It has been obvious to me that the working level in the Department in Washington in the period immediately preceding the coup was quite well aware of the dangers inherent in the situation and were making the proper recommendations to policymakers within the U.S. Government.

As I have said on numerous occasions in relatively public forum, I don't believe that our sins in this instance were sins of commission but rather sins of omission. I do not subscribe to the theory which I have heard expressed that there was a conscious effort on our part to bring about the downfall of Makarios. Perhaps my reasons for this are based too much on logic, but I can't see how anybody could propose such a solution to the Cyprus problem and not see clearly what this implied with regard to Turkish reaction.

As far as I am aware, our policy from the time of independence onward and particularly during the 1964 and 1967 crises was to prevent, if possible, a Turkish invasion of the island and the inevitable resulting de facto partition of Cyprus. I am not aware of what possible interests we could have had in the period after I left Cyprus which could have changed the basis for our previous policy.

[Ambassador Belcher's prepared statement follows:]

PREPARED STATEMENT OF TAYLOR G. BELCHER, FORMER U.S. AMBASSADOR TO CYPRUS

Mr. Chairman, it's a pleasure to be back in Washington. For the record, my name is Taylor G. Belcher. I was Ambassador in Cyprus from 1964 to 1969 and prior to that time I had served there during the period when it was still a British colony from 1957 until 1960. My earlier service in the island encompassed the period of the EOKA violence and the constructive period of discussions of its constitution and ended with the independence of the island when we assigned our first ambassador there.

When I left Cyprus in 1969, I was assigned as Ambassador to Peru where I served for 5 years until 1974. During this period, naturally I kept up as closely as I could with events on the island. Naturally having spent 8 years there and having many friends there, both my wife and I were extremely interested in the future of the island.

We visited Cyprus on a personal basis for pleasure to see our friends during the period May-June 1974. This was a time of considerable tension. There had been various attempts on Makarios' life. There was a suspicion that plots were being hatched and that there would be further attempts to depose the President. There was much talk of coups, organized by EOKA-B and by the Greek intelligence service KYP. While we were there, very senior officials in the Greek-Cypriot Government spoke of possible coups and alleged that there was a considerable involvement on the part of the U.S. Government in backing Greek efforts to unseat Makarios. I was told in very strong terms that there was documentary evidence available to the government of Cyprus that the CIA was financing the EOKA-B organization through money passed through Ioannidis in Athens who then passed it on to the Greek National Guard offices who were working with the EOKA-B in Cyprus. An outcome—to leave to the Greeks an effective role in the government of Nicosia was too perilous for our overall interests in the area.

This letter was dictated to the New York Times on the phone on Friday the 19th. The Turks invaded on Saturday the 20th and in view of the fact that the letter could not be put into the paper until early in the week, because that particular page is made up several days in advance, it was decided not to publish my views. At a later date, I wrote again to the Times stating as follows:

"The Turkish Government's decision on July 25 to limit U.S. base activity drastically was, as Secretary Kissinger said, a sad decision but hardly surprising. The administration was correct in opposing the arms embargo. The Greek lobby and those Congressmen who for one reason or another supported the arms embargo were self-defeating. I've argued against the embargo with Greek-Americans,

Cypriot-Americans and Cypriot and Greek representatives in Washington. The congressional action and Turkish reaction make us all losers. The United States and NATO have lost invaluable bases in Turkey and have at best postponed the chance of a reasonable solution or an amelioration of the Cyprus tragedy. The Cypriots continue in their misery and stagnation. How did we ever get into this cul de sac? Did it start and finish with Makarios' brinkmanship with the Greek colonels and Ioannidis? Or is there some responsibility on the seventh floor of State? It is a fact that as early as April of 1974 working level officers in State began their efforts to move Secretary Kissinger to action to avert Greek movements against Makarios. These efforts went on for weeks before the Secretary was finally persuaded to instruct Ambassador Tasca to warn Ioannides not to be so foolish as to create a fait accompli which would force the Turks to move to protect the brothers. In the event the Ambassador never did see the strong man, Ioannidis, purportedly he sent a middle-grade liaison officer to deliver the Secretary's message. The implication was obvious. It was even more so to Greeks and Turks when we did nothing to denounce the imposition of Sampson, the Athens sponsored puppet-President who, to the Turks, personified de facto Enosis.

I'll now quote, Mr. Chairman: "As former Ambassador and Counsel General when the British were still holding the ring, I have come to the conviction that whatever the shortcomings might have been of the recently deposed regime, in it lay the best hope for the peaceful future of the island. The fact that the present regime is so closely linked with, if not dependent on, orders from Athens is a disruptive element which could well lead to the Turkish intervention we have all tried to avoid since the breakdown in December 1963. If it seems that the principle preoccupation of Secretary Kissinger is the continued access to our defense facilities in Greece, then surely a major factor in his considerations must be how far Greek unilateral action can be allowed to go in this terribly sensitive area without risking Turkish counteraction under the cover of the terms of the 1960 agreement. The possibility of even greater losses involving NATO's southern flank is ever present without the relatively stabilizing element of the Archbishop and an independent Cyprus. The allegations and stories published July 18 that certain U.S. officials referred to Makarios as the Castro of the Mediterranean leave me incredulous. This is a new development since my departure in 1969.

"After many conversations over a period of 8 years with the Archbishop, I am convinced that he is unalterably opposed to communism. His primary interest, aside from his temporal role as Chief of State, is in the welfare of the Cypriot Orthodox Church and the finances of the archbishopry. He is well aware of the fact that communism would mean disaster for these interests. Of course he is and has been playing the ever-dangerous game of attempting to use the Communists—both local and international—to strengthen his position. I would hope the administration would reach the conclusion that our most feasible option in the current crisis is to stand fast with the British in confrontation and with the Greek military. Fortunately, with whatever motives Soviet policy happens to coincide, Greece must leave Cyprus to the Cypriots and we must use our considerable influence to be assured such a sponsored puppet President who to the Turks personified de facto innocence. To the Cypriot supporters of Makarios, the United States was a villain of the piece. Senior officials told me in June 1974 they knew that the CIA was paying Ioannides to subsidize EOKA-B in order to get rid of the Castro of the Mediterranean. In fact they said the bag man was a CIA man familiar with Cyprus. No denials or expressions of incredulity on my part as to how this could possibly serve U.S. interests would shake their conviction that we wanted Makarios out.

"No one imagined the scenario as it developed. But the key to the tragedy which lives on in that lovely island lies in the Turkish conviction that the United States at least acquiesced in the Athens takeover. At the very least, the United States did nothing to prevent it and at least was happy to see Makarios out. Some say that the Turks were only waiting for such an opportunity. This could be. Anyway, they did it whatever their motivation and they now control 40 percent of the island and show no indication of looking for a reasonable solution to the human tragedy we see before us.

"The misguided judgment of good friends whom I otherwise hold in high esteem have influenced our Congress against our and their best interests. The continued ban on arms sales helps no one but NATO adversaries. The Congress bears a heavy responsibility for this grave damage to our security interests. The lobbyists bear perhaps an even greater one, but the errors of judgment on the seventh floor of State in the spring of 1974 will and should haunt those who ignored Turkish

sensibility while seeking to preserve a Greek relationship on the shifting sands of a fascist dictatorship. The decisions of May, June and July of 1974 have grossly damaged our interests in Greece, in Turkey and in Cyprus. They have damaged NATO's effectiveness. They have contributed to the destruction of the way of life of tens of thousands of Cypriots. The administration is and should be fighting this belated battle to find a way out of the mutual dilemma." Mr. Chairman, this letter was not published either. It was too long and I later revised it and the revision appeared on September 16, 1965. It has been obvious to me that the working level and obviously the embassy in the Department in Washington in the period immediately preceding the coup was quite well aware of the dangers inherent in the situation and were making the proper recommendations to policymakers within the U.S. Government. As I've said on numerous occasions in relatively public forum, I don't believe that our sins in this instance were sins of commission but rather sins of omission. I do not subscribe to the theory which I have heard expressed that there was a conscious effort on our part to bring about the downfall of Makarios. Perhaps my reasons for this are based too much on logic, but I cannot see how anybody could propose such a solution to the Cyprus problem and not see clearly what this implied with regard to Turkish reaction.

As far as I am aware, our policy from the time of independence onward and particularly during the 1964 and 1967 crises was to prevent, if possible, a Turkish invasion of the island and the inevitable resulting de facto partition of Cyprus. I am not aware of what possible interests we could have had in the period after I left Cyprus which could have changed the basis for our previous policy.

Chairman PIKE. Mr. McClory has suggested, and I agree, that it might be useful to go on with the other witnesses at this point and reserve our questioning on all the witnesses for a later point.

Mr. Hartman, do you have a prepared statement to make?

Mr. HARTMAN. I do not have a prepared statement, sir. I thought we were going to respond to questions from the committee.

Chairman PIKE. If there are no prepared statements from the representatives of the State Department, I would start the questioning then as follows:

Mr. Boyatt, did you file a dissenting view, or write a dissenting memorandum, after the Cyprus crisis, detailing what you deemed to be mismanagement in this area?

Mr. BOYATT. Mr. Chairman, when we left the State Department this morning, we were under guidelines that would prohibit us from addressing any documents which are classified as that one is. I would defer to Mr. Hyland if there has been any change in the status of that.

Chairman PIKE. You were told that you cannot tell us whether you wrote such a memorandum without even going into its contents. Is that correct?

Mr. BOYATT. As I understand it; yes, sir.

Mr. HYLAND. We can get into the matter of classified information in executive session.

Chairman PIKE. Is the issue, of whether or not a memorandum was in fact written, classified?

Mr. HYLAND. No, he can answer to the facts, certainly.

Mr. BOYATT. Yes, sir, I did send such a memorandum.

Chairman PIKE. You did submit such a memorandum, but you are unable to tell us about its contents because it is classified, is that correct?

Mr. BOYATT. Yes, sir, in open session.

Chairman PIKE. Are you telling us that you can tell us about its contents in executive session?

Mr. BOYATT. I believe in executive session, Mr. Chairman, I would be able to address several aspects of it. Perhaps not all of it.

Chairman PIKE. Mr. McClory?

Mr. McCLORY. Mr. Boyatt, what was your position in Cyprus at the time we are talking about—the time of the Greek coup and the time of the Turkish invasion?

Mr. BOYATT. I was Director of Cypriot Affairs.

Mr. McCLORY. Were you receiving information from a variety of intelligence sources in that capacity?

Mr. BOYATT. Yes, sir.

Mr. McCLORY. Were you analyzing this material and then communicating your analysis to the State Department here in Washington?

Mr. BOYATT. Yes, sir.

Mr. McCLORY. Were you making recommendations on the basis of the intelligence that you were receiving and which was being analyzed in your office?

Mr. BOYATT. Yes, sir.

Mr. McCLORY. Is there factual material involved in this intelligence information to you, in addition to your analysis and your recommendations or your reports to Washington, which you would be able to testify about in executive session?

Mr. BOYATT. Yes, sir, by and large. The question of what recommendations I made to my superiors are—according to my oral instructions from Mr. Eagleburger this morning—not within the purview of the testimony I can give.

Mr. McCLORY. When we talk about your recommendations, are we talking about options, alternatives, or sort of inhouse discussion that might lead to opinions?

Mr. BOYATT. Yes, sir.

Mr. McCLORY. If you received intelligence from a source, there there would no restraints whatever on you to communicate what you received and what you then communicated to Washington?

Mr. BOYATT. I don't want to leave the impression that the only thing an officer-director in the State Department received was intelligence from intelligence sources. We are receiving a variety of reports from a variety of Embassies which are, in many cases, much more informative documents.

Mr. McCLORY. Our committee is investigating the intelligence community and we are interested in the intelligence you received. We are not so much interested in the education and the skill and the perception that a person might have from studying history and, you know, having a general knowledge of the geography or things like that.

Mr. BOYATT. Or studying the current situation.

Mr. McCLORY. Studying the current situation would involve receipts of intelligence, would it not?

Mr. BOYATT. Yes, sir, among a lot of other information.

Mr. McCLORY. Mr. Chairman, I think that this is an extremely vital area for us to get into. I think that the committee would be greatly enlightened by the information we would get in executive session, and I, therefore, respectfully move that the committee resolve itself into executive session to receive further testimony, particularly from Mr. Boyatt, but maybe from other witnesses.

Chairman PIKE. Well, I am not so sure how much we are going to be enlightened if the man who was in charge of the Cypriot desk tells

us he will not be able to tell us, even in executive session, what he recommended. But let's just try it and see what happens.

I am not particularly optimistic. You frequently are more optimistic than I am, Mr. McClory, but let's just try it and see what happens. I sort of solicit the support from the right-hand side of the aisle and I will wholly understand if you vote the other way.

Mr. HAYES. I think that certainly trying to see what happens makes a certain amount of sense, but we have already seen the parameters of Mr. Eagleburger's and Mr. Hyland's work.

Chairman PIKE. Oh, indeed we have.

Mr. HAYES. I believe it might well be possible if we proceed in open session that we can perhaps demonstrate to some small degree at least part of the problem; and the more important problem is that if we clear this room, go into executive session, we are going to lose the major part of the rest of this hour. It will soon be 11:45 and then it is 12 and then it is 12:30, and then that is the end of it, and I am afraid that we lose another day's progress in terms of some other things we could do.

Chairman PIKE. I could not agree with you more, Mr. Hayes—as to what is happening, as to what will happen—and all I am saying is, we are going to have to vote on it right now.

The clerk will call the roll.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

The "ayes" are 7, the "noes" are 3.

The committee will go into executive session.

[Whereupon, at 11:50 a.m., the committee proceeded in executive session. The following transcript of that session has been approved for public release.]

[NOTE.—See staff briefing on Cyprus of October 1, 1975, printed in part 5.]

RESTRAINTS ON INFORMATION FROM STATE DEPARTMENT WITNESSES

STATEMENT OF THOMAS B. BOYATT, FOREIGN SERVICE OFFICER, DEPARTMENT OF STATE

Chairman PIKE. The committee will please come to order. I would ask everyone except Mr. Boyatt to please leave the room.

Mr. BOYATT. Everyone?

Chairman PIKE. Everyone, including your friends.

Mr. Boyatt, it is my understanding you have a statement to read to the committee before you proceed; is that correct?

Mr. BOYATT. Yes, Mr. Chairman.

Chairman PIKE. Please go ahead.

Mr. BOYATT. Mr. Chairman, this statement was given to me by Mr. Hyland and I would like to read it.

Mr. Chairman and members of the committee, I would like to read to the committee the following statement.

My testimony before the committee in executive session is respectfully offered subject to the following provision: Because some responses I give may involve confidential material the transcript of my testimony will be reviewed by my Department—that is, the Department of State—prior to release or publication, with an opportunity to be heard before the committee on any portions thereof which the committee desires to publish.

In the event differences or continued classification cannot be resolved, then the items in disagreement shall be referred to the President for his review and if he personally determines and certifies in writing that the items in disagreement would, if disclosed, be detrimental to national security, then such material will not be published by the committee. Such determination by the President shall not in any way prejudice the rights of the committee for recourse to the courts.

Chairman PIKE. Now, is there objection from any member of the committee to proceeding under that restriction?

With one little exception that I have a little problem with—but not much of a problem because I think it is inadvertent—the restriction does, as I understand it, more or less state that which I personally agreed to, without binding the committee in any way. I agreed that, if we feel that matters which we have in our possession—either documents or testimony—should be released to the public, we will proceed as follows: We will give the agencies 24 hours' notice of our intention to do so and give them an opportunity to be heard as to their views on the subject. If we cannot then resolve our differences—if there is disagreement between us and the agencies as to what shall be released—it goes to the President of the United States. Then if the President of the United States personally certifies—and the words I find missing are “in writing,” which was a part of our agreement—

Mr. BOYATT. It is here, sir. If he, the President, personally determines and certifies in writing.

Chairman PIKE. Very well. If you read that, I missed it.

Mr. BOYATT. I thought I did.

Chairman PIKE. If he certifies in writing that the release of this material would be—now give us the next key words.

Mr. BOYATT. Detrimental to the national security.

Chairman PIKE. Detrimental to the national security, we will not release it unless we get a court order to do so.

Mr. ASPIN?

Mr. ASPIN. Mr. Chairman, I would like to voice my objection to that. I would, if we had a vote, abide by the vote of the committee on the matter, but I do think this is a very important precedent we are establishing.

Chairman PIKE. I agree with you.

Mr. ASPIN. To do it very casually, without thinking what we are doing, I think is to take a very, very serious step.

What we are in effect saying, by agreeing to these ground rules, is that when push comes to shove and there is a real crunch on an issue, the decision is solely the President's.

Chairman PIKE. That is not quite so. We are saying we would not release it if the President certified it were inimical to our national security, unless we got a court order.

Mr. ASPIN. Anyway, it is a very important issue. We as a Congress are groping and struggling with this problem as to who has the right to determine the degree of classification, what is to be classified and what is not to be classified; and I am a little worried about deciding this or making this a precedent for this whole issue. I think this issue that we decide today by accepting these ground rules is going to be one of the most important issues coming out of the Congress and coming out of this CIA investigation.

Chairman PIKE. I can only say we have had a fair amount of discussion about it in your absence. We are not suddenly deciding it today.

Mr. ASPIN. Exactly. But the question I am asking is—I would have two questions about it. No. 1, if we accept these ground rules for this testimony today, does that establish a precedent for what we will decide—

Chairman PIKE. I think there is no question but that it does and I would not attempt to mislead the committee in any manner. I believe it does.

Mr. ASPIN. A second question. Are we being wise in settling or accepting the ground rules on the one question which is the release of information question, when we have not come to any solution on the access question?

Chairman PIKE. A very valid point.

Mr. ASPIN. I am not sure we are not giving away a bargaining point here by settling one part of the thing in a way not unfavorable to the President—

Chairman PIKE. I frankly raised the same issue yesterday.

Mr. ASPIN [continuing]. In a way in which—I mean we may be giving away our bargaining ship without getting any quid pro quo in return.

Mr. HAYES. The ground rule Mr. Boyatt is discussing at this point, as I understand it, goes only and solely to this meeting and to his testimony?

Chairman PIKE. I don't think that is a fair statement. I think Mr. Aspin is correct that we are in effect establishing a precedent if we wish to do so. This is a decision for the committee.

Mr. HAYES. On other testimony that comes from State, will we at each time have to have a statement like that?

Chairman PIKE. I don't think so. I think once the precedents are established, that is the way we would operate. As always, it would be the desire of the Chair to stay in open session as long as we can, to find witnesses as forthcoming as we can find them; and when the executive branch refuses to provide witnesses who will be forthcoming in open session, obviously it is they who are doing the concealing and not we who are doing the concealing. But I can only say that I think we are indeed establishing a precedent if we do this, and it is going to be a committee decision, that is all.

Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman. I will not take a great deal of time. I simply want to say I underscore the comments that Mr. Aspin has already made and point out that my reluctance on this matter speaks to why I voted against the amendment by the gentleman from Wisconsin, Mr. Kasten.

I am in agreement with the first part of the statement—that is, that we give them 24 hours to respond—but I think there is a precedent here of giving away our ultimate right, based upon their testimony and efforts to justify not releasing it. It is an extraordinary precedent, and I think that is a power that we should not give away. However, I concur with my colleague, Mr. Aspin. Whatever the majority of the committee decides to do, I obviously have to live with it. But for the record, I want to indicate I think the precedent here is bad, and I concur with you that handling the issue of publication should be done within the framework of the total settlement. To do it piecemeal, in my estimation, weakens our ability to continue.

Chairman PIKE. In fairness to the administration, I want to say that I have had verbal assurances from: (a) Mr. Marsh and (b) Mr. Rogovin, that if this procedure is adopted, the flow of information, documents, and witnesses will resume across the board.

I do not mean to indicate that it would be without limitation. I don't know what the limitation would amount to. I don't know whether we would get more or less information than we have gotten in the past. I simply do not know.

They, as always, promise great things, or lead me to believe great things. I do not know what would happen.

Mr. McCLORY. Mr. Chairman, I wanted to indicate first of all my conviction that this committee is entitled to receive classified information. I further want to subscribe to the view that we have the right to publish material that we may receive in executive session. Classified material.

On the other hand, I think it would be a mistake to assume that that is a cut-and-dried conclusion, or that that is a recognized right. And when it is said the committee has the power to do this, I don't think that the power is necessarily established.

What we are trying to do here, it seems to me, is get on with the work of our committee without being hamstrung by a court proceeding, or to get to some other activity which would enable us to establish what our rights are to receive the information and to publicize it, particularly the publication or declassification.

It is true Mr. Pike and I discussed this subject, and it seemed to me that this was a workable solution.

I don't think we can anticipate that the President is going to veto or inject his personal opinion, and in a great number of cases we don't know. Maybe he will never do it. I think we should proceed on the basis of this condition, and see how far we go. I am convinced we are going to go very far, and we are going to get all we need, and we can conclude our hearings by the end of the year and make our report. I certainly hope that we will proceed to receive this testimony and other information.

May I say that I assume that when the transcript is concluded, the rule will also apply that whatever the State Department may regard as classified will be circled, underlined, or in some other manner indicated to us, so we are not going to have the whole volume to go through but only a small part of it in order to determine what we may want to publish or not publish.

Chairman PIKE. Upon what do you base that assumption?

Mr. McCLORY. I base that on the assumption that that was implicit in the original understanding that the committee had. That was one of the conditions.

Chairman PIKE. Suppose it doesn't happen. I agree with you that was one of the propositions I presented directly to the President.

Mr. McCLORY. If it doesn't happen, I think we should insist that is the way they will have to indicate classified information for us.

Mr. JOHNSON. Will the gentleman yield?

Mr. McCLORY. Yes.

Mr. JOHNSON. Mr. Chairman, I think it should be pointed out that this is an abrupt departure from the Eagleburger doctrine.

Chairman PIKE. I agree.

Mr. JOHNSON. Without attempting to rub anybody's nose in it, I would think that we have achieved our essential purpose at this point; and if this is the sole limitation they have, then they are acknowledging that we have the right to information.

There is a question about the declassification procedure to be used. In my judgment, the law is not clear about that. This is a very reasonable thing, and we ought to adopt it and go ahead.

Chairman PIKE. Let me make a suggestion to the members of the committee.

First of all, just for openers, can't you imagine how they are dying out there—thinking about and worrying about what Mr. Boyatt is telling us in here, and in fact he isn't telling us anything. I think there is a certain humor in the situation that you might all share.

Mr. BOYATT. I keep hoping my lawyer will show up.

Chairman PIKE. Now, let me make this suggestion to you. I am not one for delay but I suggest that we delay this testimony until tomorrow and that we do it for this reason: I have been told that documents were on their way. I haven't seen any documents.

I have been told that full compliance with the subpoena on which we voted yesterday is on its way. I don't mean the subpoena, I mean what we might call the resolution of inquiry—that it is on its way. I haven't seen it.

I recognize the validity particularly of Mr. Aspin's argument that we are giving away everything and we haven't gotten anything and I am not for that. What I would suggest we do is recess until tomorrow morning and see if the papers, which I have been told are on their way, do in fact come in, and if they do, then I think that we should proceed in the manner which has been outlined, and I think that we have essentially won our case.

Mr. HAYES. My vote in the open session against going into closed session and my remarks were not a departure from what either Mr. Pike or Mr. McClory are saying really—and I congratulate both of you for the great job you are doing; I really think it is excellent. I only wanted to demonstrate there are enormous problems, and I don't mean to indicate to you a departure from my prior attitude on trying to get along and to move ahead.

Chairman PIKE. I think we all understand where we are. I ask you to have just a little bit of consideration for the chairman's position and for that of Mr. McClory. Everybody recognizes everybody else's problems pretty well, I think. We are trying to do a job and I am terribly proud of the committee and of the committee staff, in what we have accomplished thus far.

I believe that we have arrived at a modus operandi, so to speak, which does not give away a bit of the Congress right to get information. I am not saying we are going to get every single thing we ask for. I am saying we are not giving away one bit of our right. We are going to have cases that are going to have to be handled on an ad hoc basis. It is just as simple as that, as I see it.

Mr. McCLORY. Mr. Chairman, do I understand your recommendation is that we recess this meeting, this executive session, to resume in executive session tomorrow morning at 10?

Chairman PIKE. Mr. Field has just slipped me a note and I think we had better get this on the record before we go any further.

Mr. Boyatt, do you have any oral instructions which say that, if we go along with the proposal which you have presented, you would still not be allowed to talk about your recommendations as to policy?

Mr. BOYATT. Mr. Chairman, could I answer that question in full?

Chairman PIKE. I wish you would.

Mr. BOYATT. We had a very involved scenario as to who was going to say what and you knocked it into a cocked hat when everybody left but me.

Chairman PIKE. That was my intention.

Mr. BOYATT. With respect to policy recommendations I, personally, as an officer below the Assistant Secretary level, do have oral guidelines from Mr. Eagleburger. They are that I can respond in executive session in addressing classified information of an intelligence nature or any other nature; to questions pertaining to fact; anything dealing with reports I received or reports that I wrote; whether or not I made recommendations, to whom the recommendations were made; what instructions I received as an operating officer and from whom; and whether or not my recommendations, if any, were accepted.

I cannot, however, discuss the substance of my recommendation, nor am I permitted to respond if my opinions on the subject matter would deal with an area where I made a policy recommendation.

However, Mr. Hartman—the Assistant Secretary for EUR—did come this morning, and he was and is prepared to answer those policy kinds of questions so as an institution we would not be—

Chairman PIKE. Did you make your policy recommendations to Mr. Hartman? Do you mean he would have to testify about your recommendations?

Mr. BOYATT. Yes, I suppose, among other recommendations he might have been getting from other officers and how he handled them.

Chairman PIKE. Did you say you could not testify as to the substance of your own recommendations?

Mr. BOYATT. Yes, sir.

Chairman PIKE. You mean you could not?

Mr. BOYATT. I could not but Mr. Hartman would.

Chairman PIKE. I want to thank the counsel. I think I almost fell into a trap.

Mr. BOYATT. There was no intention—

Mr. McCLORY. In your opinion would any information be withheld—maybe I put it conversely. Would all of the information relating to intelligence information and reports of intelligence be available through this procedure of your testimony about the factual matter and Mr. Hartman's testimony about the alternative reports or recommendations he received?

Mr. BOYATT. Yes, sir. My understanding of this is that the committee would have everything. It would have it from different sources, but it would have everything.

Mr. McCLORY. If Mr. Hartman did not accurately reflect your recommendations, along with the other recommendations that he received, you would be able to correct those and testify with respect to that, would you not?

Mr. BOYATT. I would certainly be inclined personally to do so.

Chairman PIKE. Yes; but the fact of the matter is, you would be under instruction, if your superior lied, to say nothing about it, wouldn't you?

Mr. BOYATT. Mr. Chairman, I just don't know what would be my instruction. I would hope that would not be the case. Nor do I anticipate that my superior would—

Mr. McCLORY. If I may continue. If there was any misrepresentation of your recommendation, you would feel free to testify with respect to that, would you not?

Mr. BOYATT. Sir, I don't think there would be any misrepresentation, but if there were I think I would feel bound, yes, to do something.

Mr. STANTON. That is not responsive to the question. Would you or wouldn't you? If a misrepresentation of your position were made, would you or would you not correct it?

Mr. BOYATT. I cannot answer that, Mr. Stanton, because if I get a direct order from the Secretary of State, then I am in the position—as are a lot of Foreign Service officers, as they will be in the future—of deciding how one should respond to an ongoing constitutional struggle between the executive and the legislative branches in foreign affairs.

In that regard, I don't want to make a speech but I would like to say, like the rest of my colleagues, we are sworn to uphold and defend the Constitution of the United States, and that we intend to do, but it is not always so easy to see where one's responsibilities lie and I don't see how I can answer that question in the abstract.

Mr. STANTON. What you are saying is you are sworn to uphold the Constitution as interpreted by Secretary Kissinger?

Mr. BOYATT. No, sir, I am not saying that.

Mr. STANTON. How can you justify telling a committee of the Congress of the United States that if a misrepresentation of your policy position is made by a superior, you are not going to correct it? How can you justify that, other than to say that it might affect you personally and therefore you are not going to—

Mr. McCLORY. If the gentleman will yield, he is not saying that.

Mr. BOYATT. That is not what I am saying. I am saying I would like not to have to commit to you in advance until I know what the legal arguments are.

Mr. STANTON. I yield to the chairman.

Chairman PIKE. What you are saying is, if one of your superiors came in and misrepresented your recommendations, you would be under instruction not to correct that misrepresentation of your recommendations?

Mr. BOYATT. Mr. Chairman, I can't say that because I am not under such instruction now and I cannot anticipate that I would be, nor can I anticipate that anyone would misrepresent anything before this committee.

Chairman PIKE. I think what we had better do—I am glad, frankly, the issue has been raised, and I am prepared to waste 1 more day. I think we had better recess.

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

I am still trying to understand exactly what your instructions are. Let me give a hypothetical illustration and maybe this will help me understand what you are talking about:

Let's say you are a Foreign Service officer in Podunk, or whatever. You make a written report summarizing facts about some given situation. In that report you also make a recommendation. You send this forward.

Would that report be available to this committee as written?

Mr. BOYATT. I don't know the status with regard to accessing documents.

Mr. MILFORD. If you are sitting in that chair and we ask you about that report, would you tell us what you had stated in the report?

Mr. BOYATT. Consistent with the instructions I now have, I would tell you everything that was in the report that dealt with fact, that dealt with analysis, but I would not deal with the policy recommendation that I made to my superior.

Mr. MILFORD. If we called as witnesses people involved in all of the various policy recommendations over this given situation, would they be allowed to testify? Not just one, but all?

Mr. BOYATT. That is my understanding.

Mr. HAYES. As a matter of discussion, since apparently Mr. Boyatt's and the Department's scenario has been disrupted by moving the others out, would it be, in the Chair's opinion, at all

appropriate to go ahead and allow those other participants who were originally the authors of this scenario, to come in at this stage and proceed, and without Mr. Boyatt having answered the hypothetical about how he would respond to anything, simply let the thing interact and see what their scenario is?

I think what has happened is that even though the President has obviously become directly involved and arrived at this conclusion, and in a sense overridden the State Department's Eagleburger doctrine, that Eagleburger still operates possibly, both as to Mr. Boyatt and as to the rest of the individuals here, but these other officers are relatively high ranking people. They may very well not give a damn what Mr. Eagleburger said or didn't say.

To be fair and forthright about it, it could well be that is their method of going in the tank on Eagleburger—to allow them to come in and testify and play out their various roles.

Since we are here on Cyprus, they have sort of copied the Greek dramas and we might as well let them put their masks on.

Chairman PIKE. If you want to hear everybody else play out their little roles in the drama, we can do that.

Mr. HAYES. To be perfectly straightforward, I think it is their game and it is so passé that it kind of makes me sick; but we may as well let it go out and possibly we and they both will learn some lesson from it and maybe they will drop the charade at the end of the time and we can proceed and get to it.

What I am upset about is that I don't mind the statement of principle, because I so thoroughly believe what we have a right to do, but if getting there is such an involuted road, I am afraid I will succumb to just losing patience rather than go ahead and let it come out. I want to get to writing the statute. I think you can use in a committee report the newspaper articles about this. I don't think I need Mr. Boyatt, really. Proceed on exaggerated assumptions on what is going on. I have voted Greek and I don't care.

In any event, I think it makes sense to proceed that way.

Mr. McCLORY. I think it is extremely important that we have all of the possible inputs of persons such as Mr. Boyatt in the State Department, and I don't think this committee wants to do anything which would restrain or restrict or discourage that; and it seems to me that the only limitation we are talking about, here, is a limitation where this kind of in-house recommendation—in development of policy through considering alternatives, options, and things like that—is the single and sole restriction which we are imposing on the person at Mr. Boyatt's level. And if, on the basis of—I don't think the law permits us to get into that kind of private in-house discussion. I think at the same time the fact that the senior officer is here and is willing to discuss not only Mr. Boyatt's recommendations but other recommendations that came at the same time, with the understanding that his position was misrepresented by the senior officer, he would, as an individual, and under his personal conviction, be free to—

Chairman PIKE. This is your understanding. It is not Mr. Boyatt's understanding.

Mr. McCLORY. Is that your understanding, Mr. Boyatt?

Mr. BOYATT. Yes, sir; I think that is what I would do personally.

Mr. McCLORY. I think, Mr. Chairman, what we should do, if possible, is to avoid our extended debates, here, and to proceed with the receipt of the maximum amount of information and testimony we can get.

Chairman PIKE. I don't buy that position. Mr. Boyatt may, himself, be willing to disregard the instruction he gets from his superiors, but we are putting ourselves in the position of talking to other witnesses who might not be willing to disregard the instruction of their superiors, even if their superiors were not telling us the truth.

Mr. McCLORY. Mr. Chairman, the instruction doesn't say Mr. Boyatt has to remain silent if the person at the policy level is misrepresenting the fact.

Chairman PIKE. The instructions do not say you must remain silent. They don't go into that; they are silent on that subject.

Mr. BOYATT. You have asked me what I would do personally and that is that I would respond.

Chairman PIKE. Certainly, but that doesn't mean everybody would do that. We are establishing a precedent, here, and the precedent is that they will instruct Mr. Boyatt not to testify as to his recommendations.

Mr. McCLORY. Mr. Chairman, you know, I think we don't want to create a confrontation, here. Now, when you say we are going to establish a precedent, the precedent will be that this man will testify with regard to any misrepresentation. That will be the precedent, not the precedent that no person will find fault with a misrepresentation of fact. We don't have any misrepresentation of fact at this point.

Chairman PIKE. We don't?

Mr. McCLORY. Not insofar as this testimony is concerned, which is what we are dealing with right now. It seems to me that we should proceed and try to get on with the work of this committee. Get the information the committee needs and avoid the hassle toward which some persons appear to be intent upon moving. I hope that we can either receive this testimony now or receive this testimony tomorrow morning; and to the extent that it goes beyond the factual information—I am more interested in the facts, I might say, than I am the individual opinion that this man develops from those facts. And then we will get these alternatives from some other officer.

Chairman PIKE. Mr. Boyatt, was your memorandum of dissent in writing?

Mr. BOYATT. Yes, sir.

Chairman PIKE. Do you have your memorandum of dissent with you?

Mr. BOYATT. No, sir.

Chairman PIKE. Were you asked not to bring your memorandum of dissent with you?

Mr. BOYATT. No, sir; nobody addressed it.

Chairman PIKE. Could you bring your memorandum of dissent with you and present it to the committee?

Mr. BOYATT. I would have to check with my superiors. I would doubt it under the guidelines I have.

Chairman PIKE. I would doubt it, too.

Mr. Johnson?

Mr. JOHNSON. In the interest of trying to save everybody's face in this thing and still get on with the investigation, I think that we ought to test just exactly what the Eagleburger doctrine is trying to do at this point. I thought they were trying to withdraw from that. It seems to me that by having Mr. Boyatt's superior here—and allowing him to testify to the fact that he did make a recommendation and that he did forward it and then having his superior here to testify as to what that was—the only thing that is really lacking is to let the State Department save face by protecting their officers from the ogres of this committee, which is the specter they have raised.

If they say he can testify that he did make a recommendation and the other fellow is here to testify what it was, and we have his written document—if we can get the written document—we have all this. We have it in a roundabout, foolish fashion but we have it. So let's test it by issuing a subpoena for this—

Chairman PIKE. Let's not issue any more subpoenas. Let's just bring Mr. Hartman in and ask him.

Mr. JOHNSON. If he has it.

Chairman PIKE. Ask him whether we can have it.

Mr. DELLUMS. Just one question: If we begin the proceedings this morning, does that mean we are operating within the framework of the publication precedent that has been established? In other words, if we begin to take testimony, are we on a road we can't get off of?

Chairman PIKE. A very good question, and I do not know the answer.

Mr. ASPIN. I have the same concern. I worry that what we are trying to do is to find a face-saving way to get around the impasse by starting on the assumption that they have backed off the Eagleburger doctrine, and we start the hearing on these kinds of things but we don't really know all of the pitfalls of the thing.

It seems to me we are in a very dangerous position if we start anything unless the whole thing is agreed to; and by the whole thing I mean not only the release of information agreed to but the access part of the things agreed to. If not in writing, it certainly is with assurances to the chairman—I would accept assurances to the chairman as being—

Chairman PIKE. The chairman very frankly is not always as alert as he might be and sometimes I miss little nuances. I really thought that the Eagleburger doctrine had in fact been withdrawn until I heard what the witness had to say.

Mr. ASPIN. That was based upon your assurances that documents were on the way.

Chairman PIKE. And witnesses would be allowed to testify.

Mr. ASPIN. So that is no good.

Chairman PIKE. My suggestion is—I go back to where I started—that we recess until tomorrow morning.

The committee is in recess until 10 tomorrow morning.

[Whereupon, at 11:25 a.m. the committee adjourned, to reconvene at 10 a.m., Wednesday, October 1, 1975.]

THE 1974 COUP IN PORTUGAL

TUESDAY, OCTOBER 7, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:07 a.m., in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; and Gregory G. Rushford, investigator.

Chairman PIKE. The committee will come to order.

The hearing this morning is on the subject of the performance of the intelligence community prior to the fourth particular instance we are looking at, in this case, the coup in Portugal.

Our first witness this morning will be Mr. William Hyland, who is our witness only because we can't talk to anybody else in the State Department without "Big Brother" watching while we interview them; and Mr. Hyland is a policymaker in the State Department, and therefore we may ask him questions, I understand, almost without restriction.

I don't know that, but I understand that.

Mr. Hyland, please proceed.

STATEMENT OF WILLIAM G. HYLAND, DIRECTOR, BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE

Mr. HYLAND. Even a cursory review of the intelligence record indicates there was no specific warning of the coup of April 25, 1974, in Portugal.

Chairman PIKE. I hate to interrupt you, but, Mr. Hyland, doesn't that first sentence say it all?

Mr. HYLAND. Would you like for me to stop?

Chairman PIKE. No; I would like for you to repeat it.

Mr. HYLAND. Even a cursory review of the intelligence record indicates there was no specific warning of the coup of April 24, 1974, in Portugal.

As far as the Bureau of Intelligence and Research was concerned, our last analytical reporting was in late March and we drew no conclusions that pointed to more than a continuing struggle for power but short of a military revolt.

The immediate question is whether there was information that should have been interpreted as a warning signal. Four events, beginning in late February through mid-March, might have commanded more attention and analysis.

First, the publication of General Spínola's book in late February, highly critical of Portuguese policy in Africa, could well have been taken as a sign of a serious breakdown in the unity of the ruling elite.

Second, in the wake of this event, the regime tried to mobilize a demonstration of military unity and support which led to the refusal of both General Spínola and Chief of Staff of the Armed Forces General Costa-Gomez to participate in such a demonstration.

Third, subsequently, an infantry regiment stationed north of Lisbon staged an abortive march on the capitol, and in the wake of this event, both Spínola and Costa-Gomez were removed from office.

Fourth, these events were followed by a period of rising tensions and tightened internal security, highlighted by arrests of both "leftists" and a purge of military officers.

In short, one could have speculated at that time that a crisis of major proportions was brewing—but it is also a fact that in the 30 days preceding the coup there was no indication of the kind of coup that in fact actually occurred. Moreover, it is also true that the Caetano regime was taken by surprise, and the long history of internal stability stretching over 50 years would almost certainly have tempered any intelligence warning, even if there had been more precise analysis.

These events nevertheless raise some general questions about intelligence that go beyond the case of Portugal.

First, there is the question of priorities. Are there any reasonable limits on what should be expected of U.S. intelligence? As a friendly country and a NATO ally, Portugal was clearly not a source of major intelligence attention. On the other hand, the United States had obvious strategic interests in the air base in the Azores, and this alone might have justified more, rather than less, attention to Portuguese trends. Even so, would this justify the diversion of analytical or collection resources from another area?

This question leads to the next problem which is the question of flexibility within the intelligence community.

It may be a legitimate criticism of intelligence that it is not well set up to shift rapidly to new areas of concern. For example, a post mortem by a leading scholar—Kenneth Maxwell in the *New York Review of Books*—brilliantly explained the long-term trends underlying the coup of April 1974. Yet, it is a problem for the intelligence community that there is necessarily a heavy concentration on current political, military and economic reporting and analysis and a more limited effort to explore longer term trends.

This limitation highlights a third problem: The question of redundancy versus specialization in the intelligence community.

It is apparent that the resources available to U.S. intelligence will either level off or continue to decline in the coming years. In such a situation, decisions have to be made whether the degree of overlap currently existing can be continued.

Intelligence is one of the few areas where it is worth while to stimulate competition and more than one viewpoint. Yet if each of the major analytical components stretch their resources over the same range, there is the risk that areas of less priority will be superficially covered.

It may be that the lesson of Portugal is that the time is approaching when a certain division of labor will be necessary. In other words, had one agency been charged with primary attention to political/social trends, a better understanding of developments in Portugal could have been developed.

While these considerations are not offered as an excuse, they are longer term questions which I hope the committee will be able to examine in the course of its hearings.

Thank you, Mr. Chairman.

Chairman PIKE. The next witness will be Lt. Gen. Samuel Wilson, the former head of the defense attaché system.

**STATEMENT OF LT. GEN. SAMUEL V. WILSON, U.S. ARMY, DEPUTY
TO THE DIRECTOR OF CENTRAL INTELLIGENCE FOR THE INTEL-
LIGENCE COMMUNITY**

General WILSON. Mr. Chairman and members of the committee, I am Lt. Gen. Samuel V. Wilson, now working as Deputy to the Director of Central Intelligence for the Intelligence Community. In the several months prior to the April 1974 coup in Portugal, I was assigned to the Defense Intelligence Agency as Deputy Director for Attaché Affairs. In that position, I was responsible for the overall supervision of the worldwide Defense Attaché System, including the selection of attachés, keeping track of their training, providing administrative and logistical support once they went on station and generally monitoring their performances.

I was not responsible for the formulation and handling of reporting requirements placed on attachés, although I kept myself abreast of the more important, the high-priority, questions to be answered. During the period under consideration, there were six U.S. military and naval attachés stationed in Lisbon under the command of an Air Force colonel. Performance-wise, out of the some 85 defense attaché offices around the world, I considered Defense Attaché/Lisbon Office somewhere in the middle.

Defense attaché reporting from Lisbon in the months preceding the coup d'état in April 1974 can be characterized as generally satisfactory and responsive to requirements. Members of the Defense Attaché Office were, in fact, in a somewhat better position than other embassy officers to obtain information concerning unrest or dissidence within the armed forces. They had established and were maintaining contact with the military leaders of the country and were reporting back their observations. From their contacts, they were beginning to become aware of the overall "atmosphere" within the military.

In point of fact, the defense attaché reporting provided the earliest accounts of the growing unrest within the armed forces and described its confused development. Although not explicitly stating that a coup was imminent, the reporting provided enough information to estimate that such a possibility did exist. Early in January 1974, for example, the defense attaché reported an abortive coup by rightist officers who were concerned that Premier Caetano planned to grant independence to Portugal's African territories. Other reports noted the discontent within the Navy over salaries and living conditions.

While these and subsequent reports on unrest in the armed forces were suggestive of a coup, they were not predictive of a coup. As can be readily recognized, predicting a coup is a very difficult and imprecise task—particularly in the very confused situation that prevailed in Portugal at that time. There were, in addition, several factors that hindered the attachés in Lisbon from getting the type of intelligence needed to predict a coup. Our attachés were in contact with the then senior military hierarchy of our NATO ally, and the coup plotters were largely from the middle and lower ranks to which our attachés had little access.

Chairman PIKE. You weren't forbidden to talk to the middle-level people, were you, General?

General WILSON. No; we were not.

Further, coup plotters are not normally forthcoming with information as to what they are up to. The fact that charges of CIA activities in Chile were widely publicized in Portugal, in my view, may have had some bearing on this. In addition, relations between the United States and Portugal were cool at this time—a fact that tended to hinder the exchange of information. Despite these obstacles, it is my belief that the attachés performed satisfactorily under the circumstances in which they were operating.

During and after the coup, attaché reporting was uniformly excellent. Reports by the defense attaché and the assistant naval attaché are particularly to be noted. During the coup and post-coup period, the attachés reported on the makeup and attitudes of the military leaders, the political developments that were transpiring at the time, and the organizational structure of the new government. This reporting, combined with that of the Embassy and collateral information, provided us a good picture of the then current situation in Portugal and the probable future developments.

In sum, Mr. Chairman, it is my belief that the U.S. attachés in Lisbon discharged their responsibilities satisfactorily in reporting events prior to, during, and after the April 1974 coup, given the host country constraints under which they had to work and the confused situation that existed.

Chairman PIKE. Thank you, General.

Our next witness is Mr. Keith Clark from the CIA.

STATEMENT OF KEITH CLARK, NATIONAL INTELLIGENCE OFFICER FOR WESTERN EUROPE, INTELLIGENCE COMMUNITY

Mr. CLARK. Mr. Chairman and members of the committee, my name is Keith Clark. I am an official of the CIA and have been for 23 years. I serve at present as the National Intelligence Officer for Western Europe—a position I have held for nearly 2 years. As an NIO, I work for the Director in his capacity as head of the intelligence community, not of the CIA.

In response to the committee's request, I have prepared a brief statement on the quality of intelligence reporting on Portugal prior to the coup of April 25, 1974.

Before getting more specific, I should say at the outset that we are obviously discussing the record with the benefit of hindsight, and whether one concludes that the performance of intelligence reporters

in any situation was good, bad or indifferent necessarily depends on how much precise predictability one thinks is possible.

It is a useful reminder, in dealing with questions of hindsight, to ask oneself how uncertain situations that are still not resolved in other countries of the world, and which we read about daily on the front pages, are going to turn out in the end. Unless we believe that history is foreordained on a time schedule, we must accept that the unfolding of historic events involves a number of elements interacting with each other. Thus, a prediction of precise scenarios and precise timing, for example, on what Spain or Italy or any number of uncertain situations will look like in the months and years ahead, would have to allow for a margin of error. If one wrote predictions and timetables for scenarios on these present and future problems, a lot of false cries of "wolf" would be made, and readers would soon cease to take seriously what was said. Intelligence reporting and forecasting are certainly not infallible. Portugal is a case in point.

Thus, I would like at the outset to make plain the point that nothing made the April 25, 1974 events inevitable, either at that time or later, and certainly nothing made it inevitable that they would take place on April 25, rather than x weeks or months before or after. Intelligence did not predict the precise scenario or the date and could not have done so unless it had had hard and precise information with respect both to the plans and intentions of the armed forces movement and to the plans and intentions of the Portuguese Government. It had some awareness of both, but hardly the complete picture in either case. The April coup took the Portuguese Government by surprise, and its subsequent course took General Spínola by surprise—on more than one occasion.

What intelligence did do, beginning early in 1974 and accelerating in March and early April, was to describe a situation clearly in process of change, an old order coming apart at the seams, a clear growth in dissatisfaction and discontent in a number of important quarters in Portugal, including the armed forces, and a rise in threats to the government's authority from the left and especially from the right.

To get more specific still about the pre-April 25 period, I would briefly characterize the reporting from the field in the following terms: Judged by reasonable rather than perfectionist standards, field reporting was neither outstandingly good nor outstandingly bad. For one thing, it reflected the static situation in Portugal for many years. Finished intelligence—current, analytical and estimative—had over the years paid little attention to domestic affairs in Portugal. The chief concerns of the United States lay in the Portuguese-African problem. Early in 1974, this coverage increased and our current publications had far more articles on Portugal in March and April than ever before.

As in most retrospective assessments, we can now see a mixture of strengths and weaknesses. On the minus side, as I have said earlier, no one predicted a coup on April 25, and no one provided—in the period before April 25—a full picture of the plans, programs, ideological orientation, and different philosophies of the members of the armed forces movement. In hindsight, I think the latter was the chief defect of the reporting record for this period. An intelligence assessment published 2 days after the coup pointed out the gaps in our knowledge

about the AFM's program and standards, and this is a pretty good contemporary indication of the state of our knowledge before the coup.

On the plus side, I think it fair to say that intelligence in the months before the coup made clear that there was a great deal of discontent in the armed forces and it was growing, that it permeated both upper and lower ranks—though for different reasons. It was made clear that in the junior ranks there was great discontent over pay and promotions and the preference given in the late years of the old regime to reservists over regulars in the Portuguese Armed Forces. But intelligence also reported the frustration in the military over the African wars and the divided counsels as to whether it was better to seek a political solution or a military solution. This debate among the Portuguese of course became intense following the publication of General Spínola's book, "Portugal and the Future," in February.

Beyond this, intelligence described repeatedly the fraying of the old regime's morale and resolve. Field reporting, and the finished intelligence which derived from it, paid close attention to the frustration among conservatives over the Caetano regime's softness and its occasional flirtation with concessions in Africa or at home. And it is sometimes now forgotten that the regime, during this period, was under more frequent pressures and threats from conservatives alarmed at its faint liberal proclivities than it apparently was from militants on the left or moderates fighting its conservative policies in Africa and at home.

In summary, in the few months before April 25, intelligence provided a reasonably clear picture of a government and society in process of accelerating change, an authoritarian regime coming apart at the seams, and suggested the strong likelihood that the familiar situation at home and in Africa would not last long. It did not call the coup for April 25 nor did it forecast the nature of the armed forces movement except by occasional suggestion.

Mr. Chairman, I have been in the intelligence analysis and estimating profession for more than 20 years. I have become painfully aware of the limits on foresight and prediction. Some things can be predicted and some cannot. Although I naturally wish we had gained more hard information in this case, without such information, intelligence could not have given accurate spot predictions on timing and scenario. And hard information would have been difficult to come by without vastly more expense and risk than anyone would have cared to undertake on account of Portugal in the years preceding the coup. It was—and is—a NATO member and one which did not have much to contribute to intelligence efforts against NATO's common adversaries.

On balance, the intelligence record prior to the coup is not a record of failure by a reasonable standard. And the intelligence coverage in the period since the coup—a period of great difficulty for the Portuguese with many uncertainties and sudden twists and turns—is in my judgment a very good one. The Portuguese Communists' bid for power has been closely analyzed without yielding to excessive alarmism. A large volume of reportorial, analytical, and estimative intelligence in the past 18 months measures up, I believe, to competent professional standards.

Mr. Chairman, this completes my prepared statement, and I am ready to respond to questions from the committee within the guidelines agreed to between the committee and the executive branch.

Chairman PIKE. I don't know what you are referring to when you talk about "guidelines agreed to between the committee and the executive branch" as far as the asking of questions is concerned. Would you just spell that out for me?

Mr. CLARK. Mr. Chairman, there will be certain matters that are classified which I will be unable to respond to questions on.

Chairman PIKE. Are you referring to open session or are you saying at all?

Mr. CLARK. Except in executive session, sir.

Chairman PIKE. Mr. Hyland, we have just heard that—and I quote directly—the committee is now operating under the 5-minute rule—from Mr. Clark's testimony that intelligence did "describe a situation clearly in process of change, an older order coming apart at the seams"—and he uses that phrase twice, "the old order coming apart at the seams."

What did the State Department do in response to this intelligence allegedly received that the old order was coming apart at the seams?

Mr. HYLAND. Well, first, Mr. Chairman, I don't believe the State Department drew the conclusion that the situation was that drastic—that the old order was coming apart at the seams.

Chairman PIKE. So if this intelligence was transmitted in that manner, the State Department disagreed with it, is that it?

Mr. HYLAND. No, sir, I don't think the intelligence was quite that clear, that a crisis that would lead to the downfall of the regime was underway.

Chairman PIKE. Let's get back to you then, Mr. Clark.

Was there ever any language in any of your forecasts that "the old order was coming apart at the seams," or is this just something you have thrown in here?

Mr. CLARK. I will concede right away that no one ever said, "This order is coming apart at the seams," in so many words, Mr. Chairman.

Chairman PIKE. You see, this is the difficulty which we get into when we get bland statements from policymakers. They paraphrase to their own benefit that which they actually said and which they actually predicted.

Now, what was the document that you produced in the intelligence community that came the closest indicating that the old order was coming apart at the seams?

Mr. CLARK. Mr. Chairman, when you get a cumulative record of current intelligence pieces which describe plots against the regime from the right and the growing discontent from the left, when they get the chief of staff and the deputy chief of staff, General Costa-Gomez, General Spinola, fired because they refuse to take a public oath of office to the regime—

Chairman PIKE. This was all in the papers, wasn't it?

Mr. CLARK. In short, when you get criticisms of the incumbent regime for being on the one hand too conservative and, on the other hand, too soft, the signs are there of a decaying, rotting situation.

Chairman PIKE. I don't doubt that the signs were there. I am asking you what document you ever produced which indicated in any manner that "the old order was coming apart at the seams"? You tell us that your intelligence was pretty good there.

Mr. CLARK. We produced a number of documents which indicated the old order was coming apart at the seams, sir.

We did not say in so many words, "The old order is coming apart at the seams."

Chairman PIKE. I ask you what document came the closest to saying that. There wasn't any, was there?

Mr. CLARK. Mr. Chairman, there were some 20 pieces of finished, current intelligence published in the period from roughly March to April 25. I can't at the moment recite from any one of them.

Chairman PIKE. Was there any national intelligence estimate addressed to this problem?

Mr. CLARK. No, sir, there was no national intelligence estimate addressed to this problem in that period.

Chairman PIKE. Thank you.

Would that not be the very basic document that we might look for in this regard? If we are going to say that the old order is coming apart at the seams in Portugal, might there well have been a national intelligence estimate addressed to Portugal?

Mr. CLARK. There might have been earlier in the history of the intelligence community when national intelligence estimates were done a little more frequently, rather more frequently than they had been done at the period we are talking about here.

Chairman PIKE. Mr. Hyland, I want to get back to you. You said you didn't think the situation was this bad over in the State Department, which was half of the answer to my question. The full question was, what did you do about these alleged estimates of disaster in Portugal?

Mr. HYLAND. We made no recommendations, as far as my Bureau was concerned, concerning policies that we might adopt in the light of the situation, and even in retrospect I am not sure what our recommendation would have been had someone warned us there was a coup.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. General, maintaining Portugal in NATO is really vital to the functioning of NATO, is it not, in many respects?

General WILSON. Are you questioning with respect to the coup period or to the present time, sir?

Mr. McCLORY. We want to use the Azores, don't we, as a place for landing our aircraft, and we don't want a Communist Warsaw Pact nation right in the middle of the NATO group?

General WILSON. In my view, Mr. Congressman, it is in our interest that Portugal remain within the NATO framework.

Mr. McCLORY. In the light of that, prior to the time of the coup, you were getting information primarily from the defense attachés who were attached to the Embassy?

General WILSON. That is correct, sir.

Mr. McCLORY. And they were getting their information from public sources, were they not?

General WILSON. They were getting their information from their official military contacts within the Portuguese Military Establishment, that is correct.

Mr. McCLORY. Do we have any covert operations going on in Portugal from which we can get intelligences?

General WILSON. With all respect, Congressman McClory, I would have to address that in executive session, sir.

Mr. McCLORY. You can't even tell me in the public session whether we had or we did not have covert operations going on at that time?

General WILSON. I would respectfully ask you not to press me on to do that, sir.

Mr. McCLORY. You mentioned that the charges of CIA activities in Chile were widely publicized in Portugal and may have had an adverse bearing on our getting intelligence.

Our CIA activities in Chile were intended to avoid a Communist regime in Chile, were they not?

General WILSON. That is my understanding.

Mr. McCLORY. Was it that effort or was it the manner in which the effort was carried out which was adversely affecting—

General WILSON. I think the manner in which the alleged CIA involvement in Chile was being reflected in the public media in Portugal was having the effect of causing people to tighten up.

Mr. McCLORY. What about the CIA's intelligence information being gathered in Portugal?

General WILSON. I feel I am not in a position to comment because I was not in CIA at the time and had no responsibility there.

Mr. McCLORY. Were you aware of that?

General WILSON. I was aware of some of their reporting, but I was not privy to the full stream of CIA reporting at that time.

Mr. McCLORY. You must have known, did you not, that the undercurrent in the military in Portugal at that time had tremendous Communist overtones?

General WILSON. Yes, sir. We were aware of the fact there were leftist influences at work within the Portuguese Armed Forces.

Mr. McCLORY. Mr. Hyland, who was the Foreign Service officer who was working on the Portugal desk, or with regard to Portuguese activities?

Mr. HYLAND. I am not certain, at that time. I can find that out for you.

Mr. McCLORY. Was the information you were getting from the person in the Service in charge of the Portugal activities giving you the same kind of information as you are giving to us here today?

Mr. HYLAND. Yes, sir, I think so. The Embassy reporting was reflected in my statement.

Mr. McCLORY. There were no dissenting views that came to your attention?

Mr. HYLAND. Not of which I know, sir.

Mr. McCLORY. Would you say the problem here is not so much that we didn't have any sound intelligence or the fact that we weren't capable of analyzing and evaluating and making intelligent judgments with regard to the information we had?

Mr. HYLAND. I am inclined to think the analysis was more at fault than the information. There was enough information to suggest trouble, but it wasn't really subjected to a detailed analysis and a projection of where the trends might be going.

Mr. McCLORY. So the problem with our intelligence basically and simply is that we have a lot of wonderful people out there working as defense attachés, and in the CIA and in covert and overt operations, who were supplying plenty of information; but we don't have the capacity to evaluate it and analyze it and make intelligent judgments on the basis of it? Would you want to qualify that?

Mr. HYLAND. A little bit. I don't think the information reported in in this precoup period was all that first rate. At least it was not to the point of predicting a major blowup.

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Clark, had you ordered any national intelligence estimates on Portugal before the coup?

Mr. CLARK. No, Mr. Murphy, I had not ordered a national intelligence estimate.

As I indicated earlier, we became aware of the signs of decay and turmoil in February and especially in March. In March, I discussed with the Western European analysts in the Office of Current Intelligence the need for some kind of wrapup and assessment on the situation there.

Mr. MURPHY. When was the last national report that you had on Portugal prior to the coup? .

Mr. CLARK. If you are speaking strictly of national intelligence estimates—the formal NIE—I think it was 1964.

Mr. MURPHY. Mr. Clark, how many countries were you personally responsible for in your position?

Mr. CLARK. My responsibilities cover all of Western Europe, including Greece, Turkey, and Cyprus. It is over 20 in all. I sometimes lose count of it.

Mr. MURPHY. About 25 countries, would you say?

Mr. CLARK. Roughly. Many of them are of no particular intelligence significance.

Mr. MURPHY. Of course, the Azores would be of particular intelligence significance?

Mr. CLARK. Yes, indeed.

Mr. MURPHY. Especially with our activities in supplying aid to Israel, is that correct?

Mr. CLARK. Yes, they are.

Mr. Murphy, I would like to complete an answer to a question that I think you are getting at. We were preparing an assessment. Not an NIE, but an analytical estimative assessment. It had the working title "Cracks in the Facade" which is one indication of the way we were thinking and it was almost at the point of being published at the time of the April 25 coup.

Mr. MURPHY. Hadn't anybody responsible to you looked at General Spínola's book where he was very critical of the government prior to the coup?

Mr. CLARK. Indeed, the analysts have read the book. I have never read the book. I have read summaries and excerpts from it.

The significance of the book was fully recognized in intelligence publications and in the press.

Mr. MURPHY. General Wilson, you indicated in one of your responses that you were satisfied with the reports from your military attachés.

General WILSON. Sir, I indicated basically satisfaction with no further adjectives. If I may add, as for that period, prior to the coup, I neither decorated nor promoted anyone in that office for their performance during that period. Neither did I relieve anyone, and I indi-

cated also in my statement that DAO/Lisbon was somewhere in the middle of the performance level of the approximately 85 attaché offices around the world.

The evaluation degree I give is "satisfactory." No higher, no lower.

Mr. MURPHY. Did you receive reports from your attaché indicating the possibility of a coup—or any warning signs?

General WILSON. We received reports with analytical commentary reflecting the unrest in the armed forces. Instances of expressions of complaint on the part of naval personnel on living conditions, salaries, this kind of thing. We had a sort of a spotty patchwork of bits and pieces that reflected generally a trend of dissatisfaction and disharmony. There were no explicit predictions that a specific event such as a coup was about to occur. They were reporting what they heard and what they thought about what they had heard.

Mr. MURPHY. Is it true, General, that your attaché posts reported after the coup how surprised they were?

General WILSON. They were surprised that the coup occurred when it did and they were not aware of all of the key people who were involved in it.

Mr. MURPHY. I find it hard to apply the term "satisfactory" to that type of intelligence.

General WILSON. The attaché on the ground in Portugal was—and this also responds to an earlier question raised by the chairman—not prohibited from contact with middle and lower ranks. However, if he ever invited anyone to his house from middle or lower ranks, he had to invite them through the Portuguese foreign liaison office, and only those people whom the Portuguese would select would attend; and so consequently, while he was not forbidden this kind of contact, it was indeed difficult in many instances for him to establish it.

Consequently, working with a NATO ally, the attaché, in the interests of propriety, did not endeavor to get out and seek clandestine contact with people whom his official host did not wish him to have contact with.

Mr. MURPHY. I don't mean to be facetious, General, but obviously there are rules of propriety among intelligence-gathering agencies and foreign governments. Is this what you are saying?

General WILSON. I am saying there are rules of propriety when you are dealing with an allied country, sir, that the attaché is a military observer-reporter, and that he has other functions. He is there as an accredited military representative and as a military adviser to the Ambassador. There is a certain framework within which he functions.

Chairman PIKE. The time of the gentleman has expired.

Mr. ASPIN. I yield Mr. Murphy 30 seconds.

Mr. MURPHY. Do these same rules of propriety apply to Israel, Turkey, Greece, and Cyprus?

General WILSON. Essentially, yes.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

I would like to ask Mr. Clark, whose job is it to order a national intelligence estimate?

Mr. CLARK. A national intelligence estimate can be requested by a great many people. Any member of the U.S. Intelligence Board, any high-level policymaker—

Mr. ASPIN. Would you be in a position to order it or would you be in a position to suggest it to somebody?

Mr. CLARK. I certainly would be in a position to suggest it, yes.

Mr. ASPIN. But the person who can request it would have to be a person on the USIB or a policymaker?

Mr. CLARK. In practice, Mr. Aspin, the Director approves the initiation of a national intelligence estimate. It is, legally speaking, his document. He sponsors it, but he is receptive to requests from any responsible policymaker and in practice these would usually come through the U.S. Intelligence Board.

Mr. ASPIN. I am still a little puzzled as to why one wasn't ordered. Even when you started working on your paper a couple of days before that, it was not a national intelligence estimate. I am puzzled as to why it wasn't. You say it was a time when the regime was coming apart. I am concerned that nobody thought about it at all and nobody ordered it in any form.

Mr. CLARK. Mr. Aspin, I think the answer to that is, national intelligence estimates these days are reserved for a—they are done less frequently than they were in previous administrations. The function that used to be accomplished by country estimates is now more often accomplished by interagency assessments or interagency memoranda. In fact, these involve coordination with the U.S. Intelligence Board representatives. They are done in much the same way that the NIE's on these subjects used to be done, but more of them are done than used to be.

Mr. ASPIN. Why wasn't one of those done then?

Mr. CLARK. I wish one had been.

Mr. ASPIN. This apparently was happening and Portugal, as you say, was not a high-priority country—or somebody said, I guess Mr. Hyland said it was not a high-priority country—and the resources were not there; but somehow, somewhere, it was missed. To your knowledge, did anybody suggest that we have some kind of a look at this thing?

Mr. CLARK. We all agreed that an assessment should be done. We were in the process of drafting one. That is, the Office of Current Intelligence was at the time of the coup.

It was anticipated this would become the basis for an interagency consideration and, in fact, it later did in the sense that much of the material that went into that estimate—the abortive estimate—was used in a subsequent interagency memorandum on the subject published early in May.

I might also say that nowadays a great deal of the warning function that used to be handled to some extent by NIE's is handled by something called Alert Memoranda which Mr. Colby instituted. These are coordinated in the sense that consultations take place between the agencies and they are designed to alert about a specific event that may happen and is of concern to the United States.

I think today we would have put out an alert memo on Portugal and have done it fairly speedily.

Mr. ASPIN. So this alert memo is something that has been instituted since then?

Mr. CLARK. That is right. It got off the ground—began to be used—within the past year or so. It was not an art form available to us at the time of the Portuguese coup.

Mr. ASPIN. And the alert memo might have picked—how did the alert memo work? How does it work? How does it happen?

Mr. CLARK. Somebody in the community—whether it is an analyst at the working level, the national intelligence officer for whatever area, or the senior head of an agency—may say, "I am concerned about the possibility of trouble in X country. Let's have an alert memo on it."

Mr. ASPIN. So the process is the same; it still requires somebody to look at it and think that maybe we ought to have further investigation of this.

Mr. CLARK. Yes.

Mr. ASPIN. Which never happened in the case of Portugal.

You see, I am trying to find some way—is there any systematic way of going through the process whereby people stop doing what they are doing daily and take stock and say, "Look, is there any place in the world we really ought to be thinking about things," and sort of go through a mental exercise of looking at these things away from the daily crush of sending reports?

Mr. CLARK. In a broad sense, that is supposed to be the business of everybody. Some have a little more time than others.

These alert memorandums do try to take a slightly estimative look and not simply report the facts, but tell what they mean and what might be the consequences if something happened.

Chairman PIKE. The time of the gentleman has expired.

Mr. Johnson.

Mr. JOHNSON. I have no questions, Mr. Chairman. I will be glad to yield to Mr. McClory.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Thank you. I really have a number of questions.

One of my questions is this: General, does NATO have any intelligence personnel? Are there any other countries in NATO that provide information and gather information that we have available to us?

General WILSON. Yes, sir.

Mr. McCLORY. We had that kind of information available in this case, did we?

General WILSON. We had what was available in this arena at that time, yes, sir. I am unable to answer on the specifics as to what we had from those sources at that time.

Mr. McCLORY. You don't know, or you could only answer in executive session?

General WILSON. I can answer only in general right now because I am not aware, I could not tell you—

Mr. McCLORY. You are not prepared to answer that?

General WILSON. I will be happy to go dig out this information. I don't have it immediately available.

Mr. McCLORY. Mr. Clark, how many countries do you have under your authority?

Mr. CLARK. Mr. McClory, I can't give you the figure. It is some 20. It consists of the countries of Western Europe.

Mr. McCLORY. You have more than 20 countries under your general authority in the CIA?

Mr. CLARK. Yes, sir.

Mr. McCLORY. How many people work for you? What is the size of your staff?

Mr. CLARK. I do not have a staff.

Mr. McCLORY. You have aides, you have persons who serve under you?

Mr. CLARK. I have one assistant. The work is done in the production offices of the agency, or of the other agencies in the community.

Mr. McCLORY. So that all the intelligence that comes in, for which you are responsible in these 20-some countries, is handled by you and one aide?

Mr. CLARK. We have a responsibility for oversight of intelligence on those matters, but obviously we don't—

Mr. McCLORY. I am talking about what happens when the information comes to you from all the sources. You and one aide analyze and report on that, is that right?

Mr. CLARK. My answer could only be yes and no. Yes; we analyze and report on it, but we do not have the primary working production responsibility. That lies in the various offices like Current Intelligence, Office of Strategic Research, Office of Economic Research, et cetera.

Mr. McCLORY. The CIA operates all over the world, I assume. You do operate in Europe and you have 28 countries under your authority and you have one aide in your office that receives the intelligence and analyzes it or reports on it. Is that essentially right?

Mr. CLARK. Not in the sense that we do the analysis and reporting, sir. We are instructed by the Director to see that it gets done in the producing offices, like Current Intelligence or Political Research or Economic Research, or whatever.

Mr. McCLORY. Does the KGB operate in Portugal, Mr. Clark?

Mr. CLARK. I believe it does, sir.

Mr. McCLORY. It seems to me one of the needs, perhaps the primary need, for the CIA is to combat or counteract the KGB, is it not?

Mr. CLARK. A fair statement; yes.

Mr. McCLORY. The KGB is operating actively, aggressively in Portugal today, wouldn't you agree?

Mr. CLARK. Yes, sir.

Mr. McCLORY. Do we know how many KGB operatives there are in Portugal today?

Mr. CLARK. I do not, and we are now getting into matters that I would prefer not to be pressed on except in executive session.

Mr. McCLORY. Do the Soviets have an embassy in Lisbon?

Mr. CLARK. Yes, sir.

Mr. McCLORY. Is that a large embassy?

Mr. CLARK. It has grown substantially in the last year and a half, I believe.

Mr. McCLORY. You mentioned how many military attachés we have in Lisbon. How many do the Soviets have there?

General WILSON. Congressman, I do not know the exact figure. I am under the impression they are slightly larger in number than we are. That is, officially accredited Soviet military attachés.

Mr. McCLORY. Would it be your judgment that these military attachés have some pretty good contacts with some of the military elements in Portugal?

General WILSON. Affirmative, sir.

Mr. McCLORY. Are they better than ours?

General WILSON. They follow different ground rules, sir.

Mr. McCLORY. They what?

General WILSON. They follow different ground rules.

Chairman PIKE. The time of the gentleman has expired. Mr. Kasten, have you any questions?

Mr. KASTEN. I have no questions, Mr. Chairman.

Chairman PIKE. Mr. Milford?

Mr. MILFORD. Mr. Chairman, I have only one question but I would like it directed to each of the three gentlemen—Mr. Hyland, General Wilson and Mr. Clark.

I am more concerned with the overall system of gathering intelligence than any specific failure that might be named—whether it is Portugal, Tet or what have you. I am looking for ways, if possible, to improve that system. Would any of you have any specific recommendations you would make to this committee whereby your particular agency could increase its own efficiency, or turn out a better product? If you prefer, you could do this for the record and submit it later.

Mr. HYLAND. I have no specifics other than to point up the fact that in a small bureau like the one I preside over, one of our main problems is the quality of the personnel because we don't have a large number of people to put on all of the things we are trying to cover and we have the peculiar situation that we draw about 50-60 percent of our personnel from the Foreign Service on rotating assignments; so one of the problems I have been working on is to try to build up a better base of permanent employees who will stay and develop experience. So from my narrow standpoint, it is quality of people. I think the system in general suffers from the problem which has been highlighted by some of the questions; that is, there is some difficulty in moving a large organization to focus rapidly on a new area of concern. Portugal was clearly one of those that was treated as a lesser priority, and as developments occurred there, that gave you cause for concern and wondering where it was going. I don't think we had the kind of system in being where we could have mobilized all of the intelligence resources quickly, because we are really talking about a period of roughly 30 days from the time of the abortive military uprising of one unit until the actual coup which was about 35 days; and it was in that period that something might have been done in terms of warning. At present, we may not have the best mechanism for doing that. There is the alert memorandum which is an improvement, I think, and a way of calling high-level attention to warning problems.

General WILSON. Congressman, if I may respond to that question in my present position as sort of Chief of Staff to Mr. William Colby, as a sort of titular leader of the intelligence community, you have just written the first line of my job description. There is a problem I endeavor to deal with on a daily basis.

I am not satisfied with what we have. I think we have made some improvements. There are a number of areas which we are trying to improve further. There is in my view nothing to be hidden here.

I believe I can be more comprehensive and responsive to your question if you will permit me to give you a statement for the record responding to this question.

Mr. MILFORD. I ask unanimous consent that his statement be included in the record.

Chairman PIKE. Without objection it is so ordered.

[The information follows:]

[Reply of General Wilson to Congressman Milford]

I respond to Congressman Milford's question in my present role as Deputy to the Director of Central Intelligence for the Intelligence Community. It should be noted that these are my own views on steps to improve our national foreign intelligence effort. In other words, I am not representing the positions of the CIA, DIA, the Bureau of Intelligence and Research of the State Department or anyone else. Further, in view of the unclassified nature of these hearings, I am obviously limited to describing measures for improvements in general and somewhat incomplete fashion.

It may facilitate understanding to group these remarks under a simplified break-out of the so-called intelligence cycle: gathering, analyzing and reporting information of intelligence interest.

I believe it is generally recognized that the strongest feature of U.S. intelligence lies in its sophisticated capability to gather intelligence, especially in the application of advanced U.S. technological means to the intelligence collection task. There are areas where we can do better, however. Some of them include:

A better national-level intelligence requirements mechanism, one which rationalizes, priorities, and levies collection requirements in a more cohesive and coherent fashion and tailors them in more refined fashion to the specific capabilities of separate collection systems. This has been a problem for at least 30 years, and we have not resolved it fully yet. Mr. Colby's key intelligence questions represent an important step in the right direction, but they are not the complete answer. Intelligence gathering by the human collector is particularly susceptible to further improvement.

In the latter connection, significant advances remain to be made in maximizing the potential contribution of the nonintelligence observer/reporter, especially the American official, who has no formal association with intelligence, but who, in the course of his duties or travels abroad, may be exposed quite openly and naturally to information of value to us. I am not suggesting something *sub rosa* or dramatic here, such as the cooption of all American officials into some vast intelligence network. I am simply pointing out that, in my view, the majority of official Americans overseas who are not associated with intelligence seem to feel that intelligence is only for the professionals, and that nonintelligence associated personnel have no obligation to report what they learn and what they think of what they have learned. To many of them, intelligence is a dirty word, something to eschew. We need to ensure that these people are aware of what is important and to develop a simple procedure or mechanism to get their knowledge and their views into our overall intelligence holdings more effectively than presently is the case.

In the analytical arena where the assessments and judgments are being made we are facing squarely an "information explosion."

A critical need for the future is to develop new and more sophisticated analytical technologies to help us sift out, digest and absorb the incoming masses of data, to discriminate the valuable from the interesting from the trivial. The analyst of the future may well function in a "file-less" environment—no safes, no folders. He may simply sit with a note pad in front of a small screen or cathode ray tube and review his information and data visually as he calls it up via a computer terminal. There is a lot of work to be done in this area.

Procedurally, we must devise better ways to scrub and to challenge the findings of the analyst and the estimator. I am for the institutionalizing of the "devil's advocate" to insure that the published final intelligence judgment has been toughened in the fire of heated debate and the interplay of opposing views.

Obviously the pay-off in intelligence is getting the report, the final product to the customer, to someone who will do something with it or about it. Here we continue to seek to improve the human communications link with that customer.

The search is on for new ways to tell an intelligence story. The tradition is the printed word, but words can mean different things to writers and readers. Further study is required in this area.

The customer also has an obligation, one which he is inclined to shirk: unless he provides feedback to the analyst and the estimator regarding the adequacy and relevance of their reports (such feedback is important to the collector as well), specific criteria and guidelines for improvement will be lacking. And products must be related to the user's in-box.

In an even more general sense, there are several additional areas in which the overall efficacy of the U.S. intelligence system can be raised.

It would be difficult to overemphasize the importance of our continuing to work on our present practice of in-house criticism, deep reviews and post mortems, assessing the responsiveness of the product, judging its timeliness and accuracy, and critiquing formats and formulations.

Better linkage between intelligence officials and those making policy decisions, developing operational options and conducting actual operations is essential if intelligence is to be truly responsive, especially in immediate precrisis and crisis periods.

These comments in no sense represent a full and comprehensive response to Congressman Milford's question. They do highlight, however, some of the more salient measures to be taken to improve our national foreign intelligence establishment. I should add that, in my professional judgment, U.S. intelligence is the world's best. But we are dedicated to the proposition of making it better still.

Mr. ASPIN. To followup on Mr. McClory's question you have, you say, some 20 countries for which you are responsible. I believe you said 25.

You have one staff assistant, but what other kinds of people can you call on? Can you levy requirements on analysts in other parts of the Agency?

Mr. CLARK. Yes, indeed, sir. I hope I made plain we are not expected to do—

Mr. ASPIN. I want to get this right: Can you order them to do your work for you? Can you order analysts in other parts of the CIA to do your work?

Mr. CLARK. Since I work for the Director, I can make a request that has the effect of an order. I am not in the chain of command of any of the various directorates in the Agency.

Chairman PIKE. The time of the gentleman has expired.

Mr. Kasten?

Mr. KASTEN. Mr. Chairman, I would like to yield my time to Mr. McClory.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. McCLORY. Thank you.

I wanted to follow through with the General because in response to the last question I asked it was said that KGB had better contacts with the Portuguese military but that the KGB operated under different ground rules. You can take as much time as you want to on this, within our time rule, to describe what limitations you feel you have, and what ground rules the Soviets operate under. If we are hampering our intelligence activities because somebody else has more advantages than we have, I think we ought to know about that.

General WILSON. Thank you, sir.

I do not feel, Mr. McClory, that the ground rules under which we operate—and I refer to previous comments that we have made on questions of propriety and ethics—are limitations. We endeavor to maintain healthy relations with the country to which we are accredited, and all our attachés have to walk a fairly straight line.

For example, our attachés are not case officers and agent handlers. This is not their role. On the other hand, in the KGB and in the Soviet Military Intelligence Service (GRU) these officers are accredited abroad in diplomatic capacities and in nearly all instances will engage in covert and clandestine operations and are obviously paying the attendant political cost, if, as, and when they are embarrassed by being caught. This is the essential distinction between the manner in which our attachés operate and the Soviet attachés operate.

Mr. McCLORY. They all operate under one umbrella. In other words, they are all coordinated. You were with the Defense Intelligence Agency, and now you are with CIA, and you have the Army intelligence and Navy intelligence and we have a whole wide range of intelligence activities.

Do you feel that the fact that CIA was operating when you were military attaché, or—not when you were operating as military attaché, but as military attachés operate, separate and apart from the CIA—does that—that interferes with our coordination doesn't it?

General WILSON. I would say, sir, our coordination problems are much more complex and difficult than those of the Soviets. Again, I sit presently in the middle of this coordination process and—if I may be facetious—there are times when I feel like a cross-eyed man with a hangover at a fast tennis match trying to watch this ball. So we do have a horrendous coordination problem.

Although I am satisfied that the curve is up in terms of improvement, we do visit difficulties, in a bureaucratic sense, on ourselves in this area. As I have said, I work with this problem daily.

Mr. McCLORY. Would you be able to comment in executive session, both with respect to our covert activities and also with respect to the Soviet KGB operations, in somewhat more detail?

General WILSON. I will endeavor to be responsive, sir.

Chairman PIKE. Mr. Stanton?

Mr. STANTON. Mr. Chairman, I yield my time to Mr. Aspin.

Mr. ASPIN. Just to followup again, Mr. Clark, on this question about what kinds of requirements you can levy on what kinds of people: Is it your statement that if you were able to levy a requirement on other analysts in other parts of the intelligence community, they would respond to you? Could you order them to respond to you? That is, to make the kind of analysis that you want?

Mr. CLARK. As I said before, I do not have command authority over them.

Mr. ASPIN. I am just a little puzzled as to what kind of authority you do have. Could you explain it? Why would they do what you ask?

Mr. CLARK. My authority derives from the fact that I am the Director's National Intelligence Officer for Western Europe. The word "National" in that title indicates responsibilities above and beyond just the Agency or any one department.

The offices, the producing offices, within the CIA are extremely responsive. A request from me has the immediate and full effect of an order.

Mr. ASPIN. How about on the covert side? Would they jump, too?

Mr. CLARK. I should make clear, sir, my business is involved in the estimating and analysis side.

Mr. ASPIN. I mean covert intelligence. I am asking, can you levy requirements on the covert side?

Mr. CLARK. The clandestine collection of information?

Mr. ASPIN. Yes.

Mr. CLARK. I can ask the Deputy Director for Operations for assistance on that and I have uniformly gotten prompt help from them when it was requested.

Mr. ASPIN. It is different from being in a position to actually give the orders, isn't that true?

Mr. CLARK. Well, you don't write their efficiency reports and if somebody didn't want to cooperate you might have a lot of difficulty. My experience has not been—

Mr. ASPIN. Let me ask Mr. Hyland this: Suppose Mr. Clark wanted information out of your operation and called up to get it. Do people jump as though you made the request of them?

Mr. HYLAND. Well, they should. They should cooperate with Mr. Clark.

Mr. ASPIN. They should. We know how bureaucracies work in this town. People respond to their immediate bureaucratic situations and not to some overall person: and here sits Mr. Clark—in charge of 25 countries, with one staff assistant—trying to pull together the evidence from various parts. There are intelligence scraps written, not with Mr. Clark in mind but other projects in mind and he is trying to pull it together.

He is no position, so far as I can tell, to really order the right kind of information up from the various parts of the intelligence community.

Mr. JOHNSON. Will the gentleman yield?

Mr. ASPIN. I will be happy to yield.

Mr. JOHNSON. The function of the NIO has been explained to us in great detail by the Director of the intelligence community in his testimony. I think it is all on the record and perhaps if the gentleman would tell us what the function is, and why this job was created, it would clear up some of the misunderstanding. Evidently there are some members of the committee who feel you are the one who is gathering this material together—reading it through and providing the material to the Director—and that obviously isn't true. Perhaps you could tell what your function is.

Mr. ASPIN. Not on my time, thank you.

Chairman PIKE. The gentleman from Wisconsin has the time.

Mr. ASPIN. Let me pursue the thing in a slightly different way. I think that Mr. Clark's job is one in which he has many countries to deal with and I think it has already been established that Portugal was not getting the right kind of attention beforehand—perhaps for good reasons, but they were not getting much attention. It would have been the kind of a situation where a national intelligence estimate would have needed to be ordered. I don't know why it wasn't, but it would be the kind of thing where a person would have to levy a requirement on all of the intelligence communities and I am trying to understand the possibility for that kind of thing happening.

Mr. MURPHY. Will the gentleman yield?

Mr. ASPIN. I yield to the gentleman from Illinois.

Mr. MURPHY. Thank you for yielding.

Let me ask you this question, Mr. Hyland. This may get into the heart of the problem. We read reports in the newspapers that there is a difference or a rift or some degree of difference between Mr.

Kissinger and Mr. Schlesinger of the Defense Department. If that exists, is this filtering down into the field operations where people aren't cooperating with one another?

I remember when the DEA and Customs—there have been differences there in sharing information on movement of narcotics around the world and—General, I didn't mean to criticize you for adhering to the rules of social behavior at State functions and I understand from your training at West Point and Annapolis that you people are a little more disciplined than maybe other people would be in a similar situation; but can you answer, Mr. Hyland, is there a difference between those two men and does it filter down into the field operations?

Mr. HYLAND. I don't think so, sir. Even from my limited perspective I see no problems in the field between military attachés, embassy officers, or CIA. There may be in some posts personal frictions but as a general matter I think most posts cooperate with each other very well. I don't think we have a problem in terms that the intelligence or the information is not getting back because of competition or friction.

Chairman PIKE. The time of the gentleman has expired.

Mr. Field?

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Hyland, you mentioned in your opening statement an article by Kenneth Maxwell. In that article Mr. Maxwell makes the statement that 4½ months before the revolution of April 25, 1974—on December 1, 1973—it had been decided by the armed forces movement to overthrow the regime of Prime Minister Caetano.

This indicates that the decision to go forward with the coup had been made in December of 1973, 4½ months before the coup took place. We know that retrospectively, at least from the newspapers.

Did you receive any intelligence at any time indicating that a decision had been made that early?

Mr. HYLAND. Not to my knowledge, no.

Mr. FIELD. Before or after the coup?

Mr. HYLAND. After, in the year or so after the coup, I think we have gotten a better idea of what happened in the preceding period but not at that time.

Mr. FIELD. This is an indication that it was not a sudden coup, not something such as occurred in Cyprus.

[Kenneth Maxwell is the author of a two-part article on Portugal which was printed in the New York Review of Books: "The Hidden Revolution in Portugal," April 17, 1975, pp. 29-35; and "Portugal Under Pressure," May 29, 1975, pp. 20-30.]

Mr. FIELD. We have heard a lot of testimony this morning which would seem to indicate that it would have been difficult to predict this kind of coup.

I would like to go through some of the information that came in through the newspapers, at this time. Before I do that, though, there was one major event which you cited, again in your opening statement, which would have indicated problems in Portugal. That was the publication of General Spínola's book which was very critical of the existing regime in Portugal. This was also one of the most widely published books in Portugal's recent history.

General Wilson, from the staff's reading of the defense attaché reports, it appears to us that it took almost a month for the defense attaché to report the substance of this book. Is that true?

General WILSON. I believe that is essentially correct, Mr. Field. It was not reported immediately.

Mr. FIELD. You stated you were generally satisfied with that performance.

General WILSON. Yes. That doesn't mean there are not specific points of the performance which I would not criticize, but, on balance, I feel it was a satisfactory performance.

Mr. FIELD. The next major event would have been a march on Lisbon by some of the military, and that took place in early March 1974.

The intelligence reports that the staff has reviewed reported that the crisis seemed to be over when the march was thwarted. Obviously the crisis wasn't over because there was a coup some weeks later.

In fact, the New York Times reported after that march on Lisbon the fact that the crisis was not over, that the crisis involved long-range problems which were "emphasized by a paper clandestinely circulated by a group of officers said to number up to 300. Backing General Spínola's thesis the paper stated the solution to the overseas problems was political, not military."

Our staff has found no indication in the intelligence community reports of this clandestine paper, which the New York Times apparently had uncovered and which correctly predicted that the crisis was not over. Have we missed some intelligence that did come in?

Mr. HYLAND. There was a very brief mention of that document in a report that I have seen, but it was not—I am not even sure it was very accurate. The report you have in mind is the manifesto of the armed forces movement that circulated clandestinely before the coup and which became public afterward. I recall seeing one reference to such a document before the coup, but it was not a major report.

Mr. FIELD. I think I remember what you are referring to and it was right before the coup, as I recall—the one mention that I saw.

However, on March 18 the New York Times was reporting it—a month and a half before the coup.

Mr. HYLAND. My recollection was around that time it appeared it—was reported but I don't have it precisely at hand.

Mr. FIELD. As another example, the Washington Post was reporting that "the possibility of a major military uprising led by young officers weary of Portugal's African colonial war was so strong last weekend that President Gomez took refuge in fortified underground bunkers."

The Post then goes on to report that the "young officers appear to have been deeply affected by their failure to win the African colonial war."

The next sentence makes an interesting observation: "They have been affected by the works of Mao Tse-tung, Karl Marx," and so forth.

This is a clear indication that there was Communist influence among the young officers.

I have seen nothing in the precoup intelligence indicating any Communist influence among the young officers.

I would now like to focus on that point. It is one thing perhaps not to have predicted the coup, but when the coup took place, according to your information, intelligence stepped up. Did anybody predict the Communist takeover when Goncalves took over in mid-July, and even after he took over? Did any intelligence indicate that he was

leaning toward the Communists? Mr. Hyland, did you get any such reports?

Mr. HYLAND. I think there was a substantial body of information pointing in that direction.

Mr. FIELD. Isn't it a fact that on July 17, 4 days after Goncalves took over, your own reports refer to this as a "surprise appointment" of a man who is "largely unknown," that what his selection meant was an "open question," we "do not know about Goncalves"—and even as late as September 27, 1974, you were reporting that he would move Portugal to a "nonaligned" stance? Do you recall those reports?

Mr. HYLAND. I think he was on the public record as saying that he preferred a nonalignment—

Mr. FIELD. The Library of Congress on May 7, 2 months before your reports: "The six political parties, including the Communist Party, had handed in their programs to the military government. The Communist Party representative met with Spínola on that day to discuss the new government."

The Library of Congress, 4 days before your reports, announced that Goncalves had taken over and referred to him as "leftist leaning." Were they more accurate—and that is a public account—than your own intelligence report?

Mr. HYLAND. I think we are getting into an area of people who are still in active public life in Portugal. We might, if you have time, go into that in some detail in executive session.

Mr. FIELD. Thank you.

Chairman PIKE. It is the intention of the Chair to go around one more time, and then it is the intention of the Chair to—either this morning, or more probably at 2 this afternoon—go into executive session, as I have some information which I think it is essential that I communicate to the rest of the committee.

Mr. Clark, you state that in lieu of the national intelligence estimate, someone was preparing a report entitled "Cracks in the Facade."

When did he start preparing that report?

Mr. CLARK. Late March.

Chairman PIKE. When did the draft of that report get to you?

Mr. CLARK. I can't tell you an exact date, but my memory was that it was 3 or 4 days before the coup. Roughly the 21st, or so.

Chairman PIKE. Did you make corrections to that draft?

Mr. CLARK. I reviewed it and talked to the analyst about improvements that I thought ought to be made, and he went back to work to make them.

Chairman PIKE. When the report was finished, the coup had already taken place; is that correct?

Mr. CLARK. As soon as the coup took place, we looked at that report and saw that there was a great deal of useful background information—

Chairman PIKE. Which had never gotten disseminated?

Mr. CLARK. Not in that report. Much of it had gone out through the regular current intelligence vehicles.

Chairman PIKE. Mr. Hyland, you cite four basic things that might have led the intelligence community to a better anticipation of the events in Portugal. Was any one of those things not published in the press?

Mr. HYLAND. No, sir, I think it was all on the public record.

Chairman PIKE. Everything there was on the public record. So can you tell us what you have got, outside of what the newspapers were reporting? You have given us four major clues, all of which were in the newspapers. Now, wasn't there anything whatsoever outside of what was in the newspapers that might have given you some clue?

Mr. HYLAND. I think there was some reporting from the attaché in the Embassy that gave more details than were in the newspapers.

Chairman PIKE. There were four basic things which you suggest to us and every one of them was in the newspapers, is that correct?

Mr. HYLAND. Yes, sir.

Chairman PIKE. Item 3 is that an infantry regiment stationed north of Lisbon staged an abortive march on the capital.

How many men are there in a Portuguese regiment?

Mr. HYLAND. I don't know, sir. I think that the march in question involved about 300 officers and men. Perhaps between 200 and 300 officers and men were involved in that march.

Chairman PIKE. That would hardly be a regiment, would it?

Mr. HYLAND. It was from an infantry regiment.

Chairman PIKE. General Wilson, how many men were there in a Portuguese regiment?

General WILSON. I would have to give you my judgment. Probably 2,300, 2,500 men, total.

Chairman PIKE. Would you believe 3,409?

General WILSON. I have no difficulty with that. You have just improved my judgment, sir.

Chairman PIKE. Mr. Hyland, you list the publication of General Spinola's book as the first of your clues. Did you ever read his book?

Mr. HYLAND. No, sir. I have read summaries of it.

Chairman PIKE. General Wilson, did you ever read the book?

General WILSON. I have only read summaries and had a briefing on it, sir.

Chairman PIKE. How about you, Mr. Clark?

Mr. CLARK. The same answer, sir. Summaries and a briefing.

Chairman PIKE. Did you read those summaries and have that briefing before or after the coup?

Mr. CLARK. I saw some summaries, very short summaries, of this book prior to April 25; yes, sir.

Chairman PIKE. How about you Mr. Hyland?

Mr. HYLAND. Yes, sir, I asked for and received a briefing from my analyst on the book.

Chairman PIKE. Who was your analyst on the book?

Mr. HYLAND. His name was Pat Garland. He is no longer in INR. He was transferred actually just before the coup.

Chairman PIKE. Was there a Portugal desk in the State Department, as there was a Cyprus desk, we find, in the State Department?

Mr. HYLAND. At that time I think it was Iberian, both Portugal and Spain, but there was an officer assigned to Portugal.

Chairman PIKE. Who was that?

Mr. HYLAND. I do not recall his name, sir. You are talking not about my Bureau but the European Bureau. I can find out. I think I know who it was, but I am not sure.

Chairman PIKE. Mr. McClory?

Mr. McCLORY. The Portuguese arms are all secured from the United States or from some other NATO country; are they not?

General WILSON. I believe that is correct, sir.

Mr. McCLORY. There are no Soviet arms being supplied to the Portuguese military, are there?

General WILSON. Not to my knowledge, sir. There may have been since the coup, but I have no knowledge of it.

Mr. McCLORY. Are there any clandestine arms sales in Portugal for the radical or revolutionary group of which you are aware?

General WILSON. Congressman, I don't know.

Mr. McCLORY. Mr. Hays, you have been sitting here at the table and I don't think you have said a word yet, but you are Mr. James Hays, and you are Director of Collections in the Defense Intelligence Agency, are you not?

STATEMENT OF JAMES HAYS, DIRECTOR OF COLLECTION, DEFENSE INTELLIGENCE AGENCY

Mr. HAYS. I work for the Directorate for Collection.

Mr. McCLORY. What did you do in that capacity, insofar as collecting intelligence about Portugal is concerned?

Mr. HAYS. The function of the Directorate for which I work is the management of collection requirements. Defense intelligence collection requirements. Our function in that particular period of time was levying requirements on the attaché for his collection and reporting. Those requirements essentially came from the production side of the intelligence system within Defense.

Mr. McCLORY. You became aware, did you not, of the various contacts with people that people in the Portuguese military had with outside forces and influences—other countries in NATO and other non-NATO countries?

Mr. HAYS. Yes, sir, through the analytical elements within the intelligence system.

Mr. McCLORY. Did you communicate this information that you received to the DIA's Office in Washington?

Mr. HAYS. I was not in Portugal, sir. I was in Washington.

Mr. McCLORY. That was communicated to whom?

Mr. HAYS. The information is reported from the attaché to our production analyst within the Defense Intelligence Agency. They analyze that, along with other members of the community, and make the production judgments. Where they have a deficiency in information, that deficiency is expressed in terms of a collection requirement, and that requirement comes through our office for appropriately being levied on the collections system.

Mr. McCLORY. Do you come to conclusions and make recommendations on the basis of the information you receive?

Mr. HAYS. We do not, sir.

Mr. McCLORY. So you didn't have anything to do with predicting a coup, or suggesting the possibility of a coup, in Portugal?

Mr. HAYS. No, sir, other than structuring requirements that our attachés operate against, one of which is a continuing requirement relative to coups or sudden changes in governments that could be against the interests of the United States.

Mr. McCLORY. Did you become aware of a growing contact between the Portuguese military and the Communist KGB?

Mr. HAYS. I would not be aware of that in the position I am in; no, sir. Not on a day-to-day basis.

Mr. McCLORY. How about you, General? Were you aware of a growing contact between the military—the Portuguese military and the KGB in Portugal?

General WILSON. I was not, Congressman.

Mr. McCLORY. Mr. Clark, what about the increased influence of the KGB in the labor organizations in Portugal? You were certainly aware of that, were you not?

Mr. CLARK. In the period before the coup?

Mr. McCLORY. Yes.

Mr. CLARK. I have read about it since the coup. I cannot honestly say I was very sensitive to it before the coup.

Mr. McCLORY. You really didn't have very good intelligence on what the Communists were doing in Portugal?

Mr. CLARK. The Portuguese Communist Party before the coup we estimated to be less than 3,000 people—heavily suppressed, of course, many of them in jail, but we knew there was also an active underground.

Mr. McCLORY. But they were strong in the unions and they were strong in the military, weren't they?

Mr. CLARK. They emerged very strong in the unions very quickly after the coup. I do not think it fair to say they were strong in the unions before the coup. Obviously they had some potential, there, and they had organization which nobody else had, so that by default of others they were able to rush in, and they are still there.

As for their relationship to the military, I think there are still many uncertainties and unanswered questions about the extent of Communist influence over the armed forces movement or any members of the armed forces movement and their relations with the Portuguese Communists prior to the coup. That there was some, I am sure, but we still don't know a lot about it.

Chairman PIKE. Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman.

General Wilson, you say you were not aware of Communist activity in the military prior to the coup. How do you explain, then, the petition signed by some 1,500 Portuguese captains and majors and presented to some authorities within the Portuguese Government, and Spínola's book almost declaring what was coming—did you have knowledge of that petition signed by the captains and the majors?

General WILSON. Yes, I did.

Mr. MURPHY. What action if any did you take?

General WILSON. I took no action, Congressman Murphy. I am not trying to duck your question. Please allow me to clarify.

In my job as the individual responsible for the defense attaché system, I in effect was the stablemaster, if you will, of the attachés, and it was not my function—although I became involved on a consulting basis on my own volition—it was not my position to do other than provide a service, to get people stationed overseas, and they then responded to the requirement of others.

I think at that time that was an organizational deficiency. I recommended that it be corrected and it has since been corrected.

Mr. MURPHY. I don't mean to be pointing a finger or casting any blame but it seems to me we had the same situation in Cyprus, we had the same situation with Tet, which I admit was out of your realm of jurisdiction and interest. What I seem to be detecting from these different episodes around the world is that there seems to be a difference in the top of the military and the top of the State Department. I don't expect either one of you gentlemen at that table to say there is a difference between Mr. Schlesinger and Mr. Kissinger. The facts as they are unfolding in testimony from panels such as the panel we have here today lead me to no other conclusion than that the CIA and the State Department talk only on certain subjects. There are certain things the CIA doesn't tell the State Department or the man in charge of a desk in a particular locality about what is about to occur or likely to occur. I see in Portugal a petition signed by 1,500 captains and majors, and, knowing the mind of the military, I know a captain or a major would never put his signature to a petition where he felt that there was little chance of getting what they were petitioning for.

These are all telltale signs. I don't mean to blame anybody for omitting them, but I am beginning to wonder, as a representative of the taxpayer, if the intelligence-gathering process may be good but when we get down to absorbing the information, as the chairman has indicated on a number of occasions, there doesn't seem to be, at the top, a digestion of all this information. Consequently, we are missing opportunities and we are being surprised around the world in coups, in battles and in other things that have cost a lot of American lives.

Mr. HYLAND. I think one point might be made with regard to the situation in Portugal, which is that there was considerable awareness from our attachés, our embassy, and people working on the problem, that there was discontent in the military. The mistake that was made is that the discontent was interpreted in traditional terms of pay, assignments, promotions; and what was not detected—which became the key factor—was that it had become politicized, as a result of the ideologies that these middle-level officers were absorbing in Africa, in Angola and in Mozambique. And it was that element of political organization, a clandestine political organization as it turned out, with a political goal, including a willingness to take action against the government, that never came through, in my view, in the reporting.

There were many reports about discontent and as the chairman mentioned, there was a revolt of sorts.

Mr. MURPHY. Let me ask this question: We had a situation with the Turkish-Cyprus invasion where we saw Turkey preparing an amphibious landing, which is tough to keep secret, as any military man knows. Yet our intelligence in Turkey indicated right down the line the Turks were going ahead and preparing for an invasion. Our CIA intelligence on Cyprus saw the same thing, but the State Department desk was kept in the dark about it.

My question is, do you people have any recommendations that you could submit to this committee that we in turn could submit to your superiors of better ways to digest intelligence and come to a determination of what is about to happen?

Mr. HYLAND. I would make one point about Cyprus. I think the initial landing—the warning that it might occur—was well known to the State Department.

Mr. MURPHY. All except to the poor fellow in charge of the Cyprus desk.

Go ahead and complete your answer.

Mr. HYLAND. I don't have any specific recommendation. I think other witnesses in previous sessions have pointed out the problem really is not so much is warning given, but is warning received, and this is a problem of trying to crystallize the message at the right time to the right person.

Even had we written on April 15, there may be a coup in Portugal, and treated it on an ordinary, morning summary, it wouldn't have galvanized the government in any particular way.

The alert memorandum, which is the beginning of a process, strikes me as the direction we have to move in, but even that has certain deficiencies in that alert memorandums are, by their very nature, open to crying "wolf." If you are charged with writing an alert memorandum, you are going to come down on the side of a more ominous prediction. Otherwise you wouldn't be writing a memorandum.

What we need, I think, is some way to look at longer term trends so when a development like Portugal comes, when it blows up rather suddenly, there is some base of information and analysis that you can turn to and say, "Well, how does this fit in with the trend we have been seeing for 2 or 3 years," and as this article that Mr. Field referred to, by Kenneth Maxwell, points out, from a sociological, economic, political standpoint, the trouble was evident to someone scrutinizing it in deep perspective. It is that lack of perspective in many places that concerns me, rather than whether we can pinpoint it to the day. That is going to be awfully difficult.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

Let me just ask a couple of questions of General Wilson about the degree of knowledge about the military. I am wondering a little bit about why we did not know more about the Portuguese military and particularly about the junior officers and things.

What is the rank of the attaché in Portugal?

General WILSON. The three senior attachés are O-6. This is colonel or captain, U.S. Navy, sir. The three junior attachés at the time were two lieutenant colonels and one Navy lieutenant. I might indicate that the star of the show was the Navy lieutenant.

Mr. ASPIN. A total of six people.

General WILSON. That is correct.

Mr. ASPIN. You are talking about the time of the coup?

General WILSON. Yes.

Mr. ASPIN. Has that been changed since?

General WILSON. It has indeed. The three junior officers at the present time are major, major, and lieutenant commander.

Mr. ASPIN. But the number has not changed?

General WILSON. No, sir.

Mr. ASPIN. Still six?

General WILSON. That is right.

Mr. ASPIN. The rank has changed?

General WILSON. The rank has changed. We have lowered the rank of the junior military attaché or assistant attaché.

Mr. ASPIN. Why is it that they knew so little, or that the attaché apparently knew so little, about what was going on below the very top—just below the very top of the Portuguese military?

General WILSON. As I have tried to indicate, I think one of the major reasons was the fact that the attachés are accredited military representatives carrying diplomatic passports, on the territory, in the capital of a NATO ally. They were relating to those elements of the host country armed forces to whom they had access the most easily and with greatest tact.

There was one exception. The young Navy lieutenant did get out and beat around the countryside a little more and, as a consequence, knew more.

Mr. HYLAND. In the case of Portugal, most of the key officers who led the coup were not serving in Portugal and hadn't served in Portugal for years. This is one of the things that bound them together—almost continuous service in Africa.

Mr. ASPIN. Leaving that just a second, Mr. Hyland, in the 6 months before the coup, how many times did these 6 people in the attaché's office get out around the country? Do you have any figures on that? How many times did they actually leave Lisbon?

General WILSON. Congressman, during my 3-month period, beginning with the resumption of my duties running this system, prior to the coup, I had two letters written to the gentlemen in Portugal and suggested to them strongly that they get out in the hinterland a bit more. They responded, particularly to the second letter which was a little stronger than the first, and got back to doing what I felt they should have been focused on.

I said a moment ago I felt the performance of these people was satisfactory. They responded to guidance and direction. I have to take some of the responsibility here. If they weren't doing certain things, it was necessary for me to tell them, and I did. But they were traveling too little during this period of time and we endeavored to correct this situation.

Mr. ASPIN. Even with the information about the people who eventually assumed high-ranking positions in the new government, apparently we knew very little about them. I mean the biographical information was very thin; is that correct?

General WILSON. For some of the reasons already indicated, yes.

Mr. ASPIN. You are saying because they were outside of the country that we didn't know anything about them?

General WILSON. This is one reason.

Mr. ASPIN. How long had they been out of the country and when were they back in the country?

General WILSON. I think Mr. Hyland can give more specifics, but it is my understanding they had been out of the country for a considerable period of time and some of them only recently surfaced in the weeks prior to the coup. I would defer to Mr. Hyland as to whether my information is essentially correct.

Mr. ASPIN. Mr. Hyland, we were trying to determine why our biographical information on the people who emerged after the coup was so thin. Not only did we not know they were the movers of this thing at the time, but even after they took over we apparently had very little information about many of them.

Mr. HYLAND. Many of them were not well known at all to us. They were officers at the level of major, some below the level of major. Most of them had served several tours outside of Portugal where we would have very little contact with them. Not in the capital of Angola, or Mozambique, but in the bush, leading troops, and that is the kind of information that is going to be very difficult to come by—especially if you mean an indepth understanding of their political attitudes.

Second, this was a clandestine organization. This was an organization that would have been broken up certainly by the Portuguese Government, had they been able to unravel it, and they were operating between Africa and Portugal clandestinely. They had their own communications system; they moved secretly. They held secret meetings.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. Hyland, to what extent was intelligence community information regarding Portugal, prior to the coup, available to your analysts at INR?

Mr. HYLAND. I know of nothing that wasn't available to my analysts from the various sources of reporting: State, Defense, and CIA.

Mr. KASTEN. Were all CIA and DIA reports available to your analysts on a timely basis? All reports?

Mr. HYLAND. As far as I know. I would have no way of knowing about a report that we didn't get.

Mr. KASTEN. How do you get this information from these other intelligence agencies on different questions of interest? Who decides which agency or which people get what intelligence information? How would you know if you had all the information? Who makes these decisions?

Mr. HYLAND. Each agency decides its own distribution, but for most information it has become standardized and there would be no exceptions, of which I know.

Mr. KASTEN. Let's say DIA had some information on Portugal prior to the coup. How would you know they had it?

Mr. HYLAND. They would disseminate it to us in a routine fashion. The reports from the attaché which come back to Washington are sent to the Department of State and specifically to my Bureau.

Mr. KASTEN. All information that they received from Portugal prior to the coup was sent to your INR people on a routine basis; is that what you said?

Mr. HYLAND. I can't answer the question—all—because the only person who would know all would be the initial recipient; but I do not know in retrospect of anything that was withheld, or any reason why it should have been withheld.

Mr. KASTEN. General, is all information that DIA receives forwarded to State? Was it prior to the coup?

General WILSON. To my knowledge, yes. I feel confident on this; It would be an automatic proposition.

Further, the attachés, as well as other personnel on the mission, work for the Ambassador, who is Chief of Mission and also the senior State Department representative on the ground, who has access to these reports at the point of origin. So you have two points at which this kind of dissemination of knowledge would take place.

Mr. KASTEN. Would the same be true for the CIA? Is all information received by CIA? Is it passed on routinely to analysts in State? Is there some information that doesn't go through that channel?

Mr. CLARK. Mr. Kasten, the answer to that is that all intelligence information received would routinely be passed. There might be certain operational matters—there would be certain operational matters that would not be passed by the Deputy Directorate for Operations.

Mr. KASTEN. Mr. Hyland, I want to change the subject.

The April 25 coup, which put Spinola and Gomez in, was, it seems to me, interpreted as a kind of change of leadership, and at that point there was no particular Communist influence that the State Department or other intelligence agencies recognized, and that continued. In other words, it didn't seem that you recognized Goncalves at that time.

Did you? And is there information showing that you predicted, No. 1, that Goncalves was the key in the overall change, and No. 2, that he was so closely identified as a Communist and with Communist groups in other countries?

Mr. HYLAND. I think initially there was some confusion as to who was the person in actual command. There was uncertainty as to whether Spinola had staged the coup or whether he had joined as a symbolic leader.

General Goncalves was identified very early on because he was a key member of the Armed Forces Movement Coordinating Committee almost from the very beginning. There was considerable debate over his political orientation.

Mr. KASTEN. Who is Martin Packman?

Mr. HYLAND. Martin Packman is my Deputy Director for Regional Analysis.

Mr. KASTEN. Would he have been aware of what you are saying?

Mr. HYLAND. Are we talking about the 25th of April or a month later?

Mr. KASTEN. In July—several months later.

Mr. HYLAND. Yes, he should have been.

Mr. KASTEN. If he was identified right away, how come in July you would refer to a surprise appointment, largely unknown, what the selection of Goncalves means, open question. We do not know enough about Goncalves.

This is in July?

Mr. HYLAND. That is true.

Mr. KASTEN. I have a Washington Post article of March 19 giving information that evidently wasn't available to Mr. Packman in July.

Mr. HYLAND. March 19, 1974?

Mr. KASTEN. March 19, 1974, entitled "Lisbon Rebel Named President," et cetera.

They have been affected by Mao Tse-tung, Karl Marx, et cetera, pointing out what influences these people have.

The point is, in July you say what is largely unknown, and here the newspapers are reporting in March—even before the April 25 coup—what they know. How is it that you didn't know in July what you just told me that you and Mr. Packman would have known slightly after the coup?

Mr. HYLAND. I think I said there was a debate about the political orientation of General Goncalves.

Mr. KASTEN. You weren't sure whether he was right wing or left wing?

Mr. HYLAND. It was never a question about his being on the right wing. The question always was how far to the left he was.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

It is apparent to me the intelligence community did not provide a satisfactory analysis and perspective prior to the coup in Portugal.

But let's look down the road at what might happen. Certainly Portugal is not that unique among countries that are ostensibly friendly to us. I can think of 5 or 10 countries quickly that could change their ideology, or even their governmental philosophy, in the next 6 months to 6 years.

What are we really doing, and what is your group really doing, to prevent the kind of things that you didn't do in Portugal? What are you doing to overcome the problems you experienced in Portugal? Can you better identify these problems and have some kind of a game plan ready if and when these kind of things take place again?

For instance, today on the radio I hear that the European Economic Community is giving aid to Portugal. I think that we should know what countries to aid in the event of a change. Who will be our friends and who will be our enemies? How do we react to these future changes that we will be faced with from time to time in this world we live in?

In other words, what steps have been taken to correct the apparent oversights that you experienced in Portugal in order to deal with any such future changes in governmental ideology?

Mr. CLARK. The short answer is, we are doing our best. but we have mentioned the alert memorandum institution which is a way of quickly conveying a warning to the highest level and lifting out that warning from the steady flow of routine current intelligence. That is one step.

We are constantly reviewing priorities in intelligence collection and analysis to see that countries that may have not received very much attention in the past in terms of intelligence analysis, if they show any signs—even faint signs—of change will receive more analysis, commensurate with possibilities. This is being done in a variety of ways throughout the intelligence community, Mr. Lehman. We cannot, as has been argued here before, guarantee against all surprises.

Mr. LEHMAN. One other quick question. Have you identified any other countries that we had better keep a close look on? And are these going to have a kind of priority for assessment so that you can concentrate on, and have a game plan prepared for, these changing situations should they take place? Is there some kind of recommendation? If a government should change in a certain country, do you have any idea how you or the State Department should react to this? It seems we never act; we only react. I am just wondering how we can deal with this in the future.

Mr. CLARK. I can only speak from my own parochial point of view in Western Europe, but I can assure you the situation clear across the southern tier of Western Europe is more unstable than it

has been since World War II. We are alert to this and are giving it higher priority in terms of analysis than it has had for many, many years.

Mr. LEHMAN. That is the kind of answer I want you to indicate to me.

Mr. CLARK. But I cannot guarantee against all surprises.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I yield to Mr. Kasten.

Mr. KASTEN. It looks like you might have some information you could provide the committee that you didn't have during my previous questioning.

Mr. HYLAND. I now have the memorandum you were referring to.

Mr. KASTEN. We have an April 25 coup; we have a July 14 change in power; and it seems to me there is a basic problem. I have information starting from March 19.

Now, regarding the April 25 coup, it seems to me the intelligence community—or at least from the information we have—the intelligence community didn't recognize who was behind the two key people, Spinola and Gomez, and it was not recognized that the key person even at that time was Goncalves. Is that correct, or incorrect?

Mr. HYLAND. I would say it is correct. On the 25th of April, we didn't recognize Goncalves as the key mover.

Mr. KASTEN. How could that happen? The newspapers and others obviously recognized on March 19 that there were at least serious problems and questions that ought to be raised, and what kind of relationships these people have—not only Goncalves, Spinola, and Gomez, but the whole group of them—to the left wing Communist countries, and also left wing Communist ideologies. Why wasn't that recognized in March and April?

Mr. HYLAND. First of all, it is not true that the entire group is oriented to the extreme left or to the Communist ideology. In fact, they were very badly split and have remained split almost from the outset between those that moved toward the Communists and those who didn't want to.

That is the reason we have a crisis right today; but the fact is, which I think I mentioned earlier, that we did not understand and we did not have much reporting, if any, on the politicization of this group of junior officers which may have numbered as many as 300, of which Goncalves later emerged as one, but not the only key figure. There were several other figures who were just as powerful as Goncalves.

Mr. KASTEN. In July, Goncalves takes over.

Mr. HYLAND. As Prime Minister.

Mr. KASTEN. He becomes obviously a center of power. But in April evidently you didn't know what the relationship between Goncalves, Spinola, and Gomez was.

On July 14 it is clear that Goncalves comes over. At that point, what was your evaluation of Goncalves?

Mr. HYLAND. I could read from this classified memorandum but I am very reluctant to.

Chairman PIKE. May we have the memorandum, Mr. Hyland?

Mr. HYLAND. Yes, sir, I believe so. I think that is what Mr. Kasten has been reading from.

Mr. KASTEN. I didn't read from it because it was classified. I was paraphrasing parts and trying to get you to respond.

I think the two of you can say whether you can respond to that.

I had questions about the general tone of it which indicated to me that even on July 17 your person, Martin Packman, did not say what you say we understood. Is there another memorandum that hasn't been made available to this committee that would be contrary to this information?

Mr. HYLAND. There are 1½ pages, single spaced, about General Goncalves, in this memorandum, which goes into considerable detail as to what we knew about him.

The first line of the memo, which I think is a kind of rhetorical throwaway, that he is not well known—

Mr. KASTEN. Perhaps we haven't the same memo. I am talking about "Surprise appointment." "Largely unknown." "What the selection means is unknown, open question. We do not know enough about him."

How is it on July 17 that you wouldn't have that information?

Mr. HYLAND. The memo, as I read it, gives a considerable amount of information about General Goncalves.

Chairman PIKE. I would caution you, Mr. Kasten, about reading from classified documents. This is not the Senate Foreign Relations Committee. You know, we are not allowed to publish any documents over here.

Mr. KASTEN. I have tried not to use the same words in the same way.

I want to ask one further question: On September 27 there is a memorandum we have that indicates even then you did not have the information as to whether or not Goncalves was being influenced by so-called leftists. It is clear—I am going to paraphrase. You are saying things like: It is clear there might be a move to the left. This is September 27.

Now, how can it be that the newspapers on March 19—that we go through that whole period of time and we still see no strong statement from your people indicating that you know about the associations and the alignments of this key person? How can that be?

Mr. HYLAND. I don't think that is accurate. You are talking about the period when Spinoza was removed—September 27. The actual drastic move to the left occurred the following March. All through this period you have to understand that there was never a clear unity among the key military figures.

There was always a struggle and it was never clear until March 1975 what would be the final trend.

At that time, after the abortive coup—a coup which might not even have occurred—it was clear that the left had won the struggle for power, which led then into this July, to the counteraction of the socialists and dismissal of Goncalves.

Chairman PIKE. Mr. Hayes, did you have any questions?

Mr. HAYES. Mr. Hyland, the briefing papers and the testimony this morning, so far as I am aware of the formal presentation of that testimony, has not revealed in any way whether or not we have any contact with other Western European intelligence resources, in order

to determine what the scenarios were that were unraveling in Portugal up until April 25, 1974. Do you have any comment about that apparent gap?

Mr. HYLAND. Prior to April 1974—the coup?

Mr. HAYES. Yes.

Mr. HYLAND. I am not aware of what we might have gotten from foreign intelligence. I don't believe we had anything.

Mr. HAYES. The reason I mention it is that during the spring of this year, a parliamentary exchange was sponsored here in the United States. I had the opportunity to discuss with members of the German Parliament—the Social Democrats, the Free Democrats, the Christian Democrats—their analysis, and at the time they were here the election was taking place in Portugal. They discussed very openly and very freely the channeling of money into the Social Democratic elements in Portugal, a variety of meetings that had taken place. They were aware of personalities. They, for example, knew intimately, apparently, Mr. Carlucci, and understood his role. No contact at all though, from what I can tell.

Mr. HYLAND. This is postcoup you are talking about?

Mr. HAYES. I am discussing postcoup, but in addition to that the antecoup period. They did discuss some knowledge of that, including financing. I wonder about the gap there.

Is there any explanation at all in your mind on that total lack of correspondence?

Mr. HYLAND. I am really a little bit puzzled. I don't think we had much contact in other European countries concerning Portugal because I don't think Portugal was regarded as a critical situation.

Mr. HAYES. So our other NATO allies would not have been contacted, nor would we have discussed it with them?

Mr. HYLAND. No, sir.

Chairman PIKE. That concludes not only this session, but unless we have another hearing on the performance of our intelligence community immediately prior to the Soviet move into Czechoslovakia in 1968, it also concludes our examination of the performance of the intelligence community as to subject.

I do not mean to indicate that we are not trying to flush out some of the testimony which we have previously had. We may call additional witnesses.

The Washington Post is not always my favorite newspaper but the lead story in today's paper, headlined "Ford Plans New Controls over the CIA," says "The basic problem that has emerged from the Ford administration's review of intelligence operations is lack of a method to evaluate the cost and worth of these information-gathering functions."

I find that rather interesting because it is exactly the road down which we have been traveling.

I am going to recess the meeting until 2 o'clock this afternoon, when we will meet in executive session.

Mr. McCLORY. Mr. Chairman, if you would yield for an observation: The fact that the witnesses will not probably be required to return does not mean that we may not require additional documentation and additional materials which relate to these subjects.

Chairman PIKE. Mr. McClory, we require all kinds of additional documentation. The problem is we haven't been getting it.

Mr. McCLORY. You are not indicating at the conclusion here that we are not persisting in our desire for information—I am addressing my statement particularly to Mr. Hyland because I think he is aware of the fact that there are materials——

Chairman PIKE. Mr. Hyland ought to be perhaps the most aware of the documents we have requested but have not gotten. For example, under the guise of protecting the middle-level employees of the State Department, we find excised the communications from Washington to the Ambassador in the Cyprus situation. We have all kinds of problems with Mr. Hyland.

Mr. McCLORY. Mr. Chairman, one other observation: I think it would be appropriate at this time for me to move that the committee do go into executive session.

Chairman PIKE. The gentleman is absolutely correct.

The clerk will call the roll.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 7 to 0, the committee goes into executive session. It is nice to have the committee operating unanimously.

[Whereupon, at 12:15 p.m., the committee was recessed, to reconvene in executive session at 2 p.m., the same day.]

THE NATIONAL SECURITY COUNCIL AND THE 40 COMMITTEE

THURSDAY, OCTOBER 30, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 2154, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; Jeffrey R. Whieldon, counsel; Fred Kirschstein, Gregory G. Rushford, and Cheryl Tina Yamamoto, investigators.

Chairman PIKE. The committee will come to order.

Over the course of our investigations, I have done my very best to tell people that we were not the CIA committee, but the Select Committee on Intelligence; and one of the things that we have learned as we have progressed down this road is that the CIA does not go galloping off conducting operations by itself.

There may be some minor things that are done by the CIA here and there that don't get much consideration higher up, but the major things which are done are not done unilaterally by the CIA without approval from higher up the line.

One of the channels for such approval—and in fact, the statutory channel for such approval—is the National Security Council, and our first witness today will be Mr. William Watts, who is currently the president of Potomac Associates, and who was formerly the senior staff member of the National Security Council.

Mr. Watts, we thank you for being here. Please proceed.

STATEMENT OF WILLIAM WATTS, PRESIDENT, POTOMAC ASSOCIATES, AND FORMER-STAFF SECRETARY AND SENIOR STAFF MEMBER OF THE NATIONAL SECURITY COUNCIL

Mr. WATTS. Thank you, Mr. Chairman.

Mr. Chairman and members of the select committee, it is a privilege to appear before you this morning to discuss aspects of the role and functions of the National Security Council. In the course of my remarks, I will also make certain recommendations and suggestions.

I hope that these comments will be of some assistance to you as you proceed with the difficult and important hearings you now have underway.

The National Security Council is undoubtedly one of the most important, and at the same time least understood, institutional mechanisms in the U.S. Government. In one way or another, the NSC deals regularly with some of the most critical and sensitive policy issues and decisions our Nation faces. Yet it is both a body and a process about which much too little is known, even by Members of Congress. At a time when the complexities of foreign affairs, and the interrelationships of foreign and domestic policy, are increasing virtually day by day, this lack of understanding serves nobody well—neither Congress, nor the executive branch, nor, most importantly, the American people, themselves. As the elected representatives of the American people, you have a special responsibility and duty to attain the firmest possible grasp of just what this crucial machinery is all about.

I think it is fair to say that if the National Security Council, and the support mechanism that is its lifeblood, did not exist, they would have to be created.

In dealing with the multitude of foreign policy issues and decisions, the President of the United States must have an independent institutional capacity that can provide him with two critical functions and capabilities:

First, he needs a screening and coordinating device that can bring to his attention the principal views and judgments of all departments, bureaus, and agencies affected by the issue at hand.

Second, he needs a mechanism that can guarantee a reasonable measure of independent analytical advice, not unduly influenced or weighted by the interests or pressures of any single governmental agency.

The National Security Council, and the National Security Council system, have been designed to assure these services to the President.

Just what is the National Security Council?

On this point, there is much confusion, and a great deal of loose talk. In fact, the National Security Council, as created by the National Security Act of 1947, as amended, consists today of just four people: the President, the Vice President, the Secretary of State, and the Secretary of Defense. Until recently, there was also a fifth member, the Director of the Office of Emergency Preparedness. That position, a holdover from post-World War II civil defense planning, has now been abolished.

In addition to these members, meetings of the National Security Council are attended by the Assistant to the President for National Security Affairs, the Director of Central Intelligence, the Chairman of the Joint Chiefs of Staff, and other officials whose presence is considered necessary for discussion of the particular policy matter of the day—for example, the Deputy Secretary of State, the Deputy Secretary of Defense, the Attorney General, and other appropriate Cabinet or subcabinet officers and agency heads.

It is perhaps worth noting that the Assistant to the President for National Security Affairs, who is often identified as the head of the National Security Council, is not, in fact, even a statutory member of

that body. Nor is any department head whose responsibility extends to the domestic arena, in spite of the fact that the National Security Act of 1947 stated, "The function of the National Security Council shall be to advise the President with respect to integration of domestic, foreign and military policy relating to national security."

I think it is interesting to note that the first item that needs to be integrated is domestic issues.

To serve the needs of the National Security Council, a staff has been developed over the years. While it has grown in size, it has remained relatively small as Washington staffs go, and has generally been characterized by an unusually high degree of professional competence and excellence. From my own perspective, I have never worked with a more able and dedicated group of men and women than I did in the period 1969 to 1970, when I was staff secretary of the National Security Council.

The staff, itself, has undergone a variety of transformations over time, but it has tended to include at least three general components:

First, several geographic offices, normally paralleling the worldwide division adopted by the Department of State. This means that there could be individual offices dealing with Europe, Latin America, Asia, Africa, and the Middle East.

Second, an office of systems analysis, that is charged in particular with looking at the specifics of policy tradeoffs across the board.

Third, a planning function, ideally long-term in nature but frequently caught up with more short-term considerations.

In addition, there have been a number of support units, including intelligence analysis, specific task forces, and administrative and personnel underpinnings.

The special task forces are geared to deal with finite issues or problems, such as the verification panel for analyzing the extraordinarily difficult problems dealing with verification of various aspects of the strategic arms limitation talks; the Vietnam Special Studies Group, designed to evaluate the many facets of strategic, military, and political planning of our role during the Vietnam war; the Washington Special Actions Group, an ad hoc body with particular concern for sudden crises that could entail U.S. paramilitary or military involvement; and the 40 Committee, the body charged with consideration of special covert actions.

The members of the NSC staff are recruited from both within and without the U.S. Government. Foreign Service officers from the Department of State are assigned on detail, as are officers and civilians from the Department of Defense, members of the Central Intelligence Agency, personnel from the National Security Agency, and individuals such as myself brought in from outside the Government.

From time to time, concern has been expressed that an officer of the Central Intelligence Agency, for example, serves on the NSC staff. It has been alleged that this somehow represents an infiltration of the Office of the President by an outside agency.

In my own view, such reasoning is specious and downright foolish. The National Security Council staff should include the most competent men and women available, and needs representation from at least the principal departments and agencies of our Government charged with protecting and promoting our national security. Without such repre-

sentation on the staff, and the insights these people bring, the staff simply could not do its job as well as it should.

At the top of this body sits the Assistant to the President for National Security Affairs, the principal White House staff assistant and coordinator to the President for all national security matters. As noted above, this individual is not a statutory member of the National Security Council, itself.

What does the National Security Council do?

On a day-to-day basis, the Council staff handles a wide variety of analyses and recommendations requiring Presidential action on those more limited issues that are not deemed sufficiently important to warrant a meeting of the National Security Council, itself. Most of this work results in briefing and options papers prepared by the NSC staff, generally on the basis of information, recommendations, and views solicited from the major departments concerned, usually State, Defense, CIA, and, to a lesser degree, Commerce, Treasury, Agriculture, and so forth. The genesis of such papers is often a national security study memorandum usually referred to as an NSSM, which is a request emanating from the White House for views and policy alternatives on a given issue. Subsequent Presidential directives may take the form of simple approval or disapproval of a given course of action. On larger or more complex issues, this decision may be embodied in a national security decision memorandum, referred to as an NSDM, which is a specific order from the President to proceed with certain actions or policy planning.

This staff process, which does not include a meeting of the National Security Council, itself, almost certainly comprises a majority of the work performed by the National Security Council. In practice, it takes the form of a delegation at Presidential direction on behalf of the Council to act without full and formal Council involvement.

Only the most serious or broadest policy considerations culminate in a formal meeting of the National Security Council.

It is this combination of staff action on behalf of the Council, and the closed nature of Council meetings, themselves, that are a source of so much misunderstanding as to what the Council is all about.

In fact, the National Security Council, at least during the administration of former President Richard M. Nixon; met increasingly infrequently as time passed. At the outset, the Council met with considerable regularity—perhaps two to three times per month, and sometimes on a weekly basis. As a rule, each meeting was devoted to a specific policy issue or broad policy area. As time went on, however, meetings of the full Council were called less and less often. It is my understanding that, in recent years, several weeks or even months could go by without a formal meeting of the National Security Council.

The nature of National Security Council deliberations has been a subject of extensive speculation, both within and without the Government. Such speculation is frequently wide of the mark.

Thus, we often read of intense and at times heated discussion of the issues. The decisions, one gathers, are taken by vote, after all the options have been presented and argued out in detail.

From my own experience, this is not normally the case. In fact, the National Security Council is not a deliberative body in the sense that, for example, committees of Congress are understood to operate.

Rather, the National Security Council meets to give its approval to a consensus already reached through extensive and intensive inter-agency staff work, which has resulted in a final options document presented to the National Security Council. This document has already been signed off on by the Senior Review Group, made up of the No. 1 or No. 2 man from the various departments concerned, and chaired by the Assistant to the President for National Security Affairs.

Thus, the National Security Council in a plenary session is more a ratifying than a debating body, serving to endorse a position or positions concurred in by the bureaucracy, or acceding to a Presidential inclination or decision reached in advance.

It would probably be unfair to characterize all this as purely a rubber-stamp procedure. After all, the staff deliberations that led to the final approved paper can be highly intense in nature, and the positions of individual departments or agencies are put forward with the direct or indirect involvement of their most senior officials. Yet consensus on the most viable or appropriate course of action has, through that process, been largely arrived at, meaning that the actual NSC meetings can take the form of ratification rather than rigorous debate and dissent.

One further point should be noted. At times of extreme stress, when critical decisions must be reached in a matter of days or even hours, the neat staffing process, geared to insure extensive interagency discussion and debate, vetting of all the alternatives, and careful cost-benefit analyses, can and does go by the boards. Under such severe time pressures, as well as considerations of extreme secrecy, the operative network can shrink to a very small number of individuals.

In short, and this point cannot be stressed enough, the National Security Council and the system on which it is based is a reflection of what the President wants. Depending on his own interests and desires, the Council can meet in full session with great regularity—or with equally great infrequency; the composition of individuals invited to participate can be large—or it can be small; preparation of papers for review can include the work of many individuals from many departments—or that work can be handled by a very small number of people working under conditions of maximum secrecy. That is the nature of the beast, and to a very large extent it is a proper, or at least inevitable, Presidential prerogative.

Just as, for example, Congress can and does bridle under Presidential exhortations of how it should conduct its business, so a President and his closest advisers can and do bridle when they feel they are being pushed to act in a fashion with which they are not comfortable or with which they do not feel secure. There is in all of this the endless and unresolved constitutional issue of the distinction between the executive and legislative branches. It is an issue with which this committee is now grappling. It is an issue, I feel safe to say, with which Presidents and congressional committees will be grappling for as long as our system of constitutional government endures.

Given the background I have tried to sketch out, given as well the assured realization that any system can be improved, and given, finally, the constraints imposed by our system of separation of powers, where is there room for legitimate congressional action in an attempt to make the system more responsive and more efficient, more amenable

to constructive congressional-executive cooperation, and more understandable and therefore acceptable to the American people?

1. As I indicated earlier, the National Security Council, as presently constituted, has no statutory representative, other than the President, who can speak to domestic considerations and concerns. In a world where foreign policy in many areas is also domestic policy—oil and grain are obvious examples—this is, in my view, a serious but correctable weakness. It places an unfair burden on the President, since only he can take fully into account the domestic consequences of foreign policy actions.

Accordingly, I recommend that the National Security Act of 1947 be amended to include the presence, as a statutory member of the National Security Council, of a Cabinet officer who is concerned with domestic as well as international issues. The logical candidates, in my mind, would be either the Attorney General or the Secretary of the Treasury.

In the past, however, the Attorney General has frequently borne a special relationship to the President. Furthermore, the Secretary of the Treasury, by the very nature of his responsibilities, including a need to assess all proposed policy actions as they relate to the overall limitations of the Federal budget, has a particular mix of domestic and international policy concerns and considerations. Therefore, I would come down on the side of seating the Secretary of the Treasury on the National Security Council.

2. As described above, a—and perhaps the—principal benefit to the President of having an in-house foreign affairs staff is its own relative freedom from bureaucratic pressures, and its own independence to analyze the pros and cons of various policy options and alternatives. Under such circumstances, it is potentially corrupting to such analysis if the principal officer of the National Security Council staff, the Assistant to the President for National Security Affairs, also heads an independent executive department, and who, therefore may bring to his analytical role as assistant to the President the bureaucratic or agency interests and pressures of his own department.

It should also be noted that, by a Presidential directive of November 5, 1971, the President created a National Security Council Intelligence Committee, chaired by the Assistant to the President for National Security Affairs. Committee membership includes the Attorney General; the Director of Central Intelligence; the Under Secretary of State, now Deputy Secretary of State; the Deputy Secretary of Defense; and the Chairman of the Joint Chiefs of Staff. The announcement establishing this committee stated, "The Committee will give direction and guidance on national intelligence needs and provide for a continuing evaluation of intelligence products from the viewpoint of the intelligence user." Once again, an impartial observer could ask whether it is wise that a function of such sensitivity should be vested in the hands of an individual who is both a principal staff officer to the President and at the same time the head of an independent executive department.

Accordingly, I recommend that, following the next Presidential election, legislation be introduced that specifically precludes the Assistant to the President for National Security Affairs from serving concurrently as a member of the President's Cabinet.

3. Much is being said and written about the need for congressional oversight of certain functions of the executive branch. One form of oversight already exists—the budgetary review process. In the case of the National Security Council budget, hearings before the House and the Senate have been, in my experience at least, perfunctory in nature. When I testified in early 1970 before the appropriate House and Senate committees to defend the proposed NSC budget, the questions posed in the House were entirely general in nature. No serious effort was made to gain the insights that close examination of the budget could provide—makeup of the staff, support activities performed, functional requirements, and the like. When I appeared before the Senate committee, the budget was approved by voice vote without any questions asked whatsoever.

Accordingly, I recommend that both Houses of Congress devote considerable time and effort to careful examination of budgetary requests for the National Security Council. This is not, in my view, an improper intrusion of the legislative branch into the workings of the executive. Rather, it would represent a highly appropriate analysis of needs and requirements, through which Congress can become far better informed of the crucially important workings of the National Security Council and its staff.

4. Over the years, and particularly since President John F. Kennedy named McGeorge Bundy as Assistant to the President for National Security Affairs, this position has become increasingly important and influential, frequently surpassing in power and impact individual Cabinet officers, including even the Secretary of State and the Secretary of Defense.

Accordingly, I recommend that consideration be given to making appointment of the Assistant to the President for National Security Affairs subject to confirmation by the Senate, as is now the case with Cabinet members and many other senior level executive officers.

Such hearings could help to broaden the basis for future cooperation between the legislative and executive branches, and perhaps open the way to more regular and informative hearings by Congress at which the assistant to the President would appear. In the long term, I believe, this would only serve to strengthen our national security system, and enhance public confidence in its workings and purposes.

Thank you.

Chairman PIKE. Thank you very much. I think before we have any questions, we will have the next witness give his statement, also. Our next witness is Mr. James Gardner, who formerly held the position of liaison between the State Department and the 40 Committee which Mr. Watts has referred to.

Go ahead, Mr. Gardner.

STATEMENT OF JAMES GARDNER, FORMER LIAISON BETWEEN THE STATE DEPARTMENT AND THE 40 COMMITTEE

Mr. GARDNER. Thank you, Mr. Chairman.

I have been asked to describe to this committee the procedures followed in the Department of State in handling matters that fall within the jurisdiction of the 40 Committee.

My own knowledge of this stems from my association for the 9 years preceding my retirement last year with that part of the Bureau of Intelligence and Research that maintains liaison with the clandestine services of the Central Intelligence Agency. My work during these years was at increasing levels of responsibility in the Deputy Directorate for Coordination (IND/DDC), which, among other functions, staffs and coordinates for the Department proposals made within the Government for covert intelligence operations overseas that are sufficiently important or sensitive to warrant the most careful consideration at senior levels of the Government. As this committee is aware, it is within the province of the 40 Committee to consider and pass upon such proposals.

The normal procedure in the Department for handling a proposal for covert operations is approximately as follows: The proposal, no matter whether it is generated in the field or in Washington by one of the concerned agencies—normally CIA, sometimes State—is first informally discussed in a meeting in the Department that includes the appropriate regional Assistant Secretary—or his deputy—CIA representatives and a member of INR/DDC. If it is decided that the suggested operation would substantially serve the national interest, and that it would not involve undue risk, it is converted, ordinarily by CIA, into a formal memorandum of proposal addressed to the 40 Committee. This memorandum is then disseminated by the secretariat of the 40 Committee, through channels selected by each agency represented on the committee to its committee principal.

The memorandum typically describes the problem thought to require attention, the feasibility of covert action in meeting it, and the degree of risk the operation is estimated to entail. It also sets forth the anticipated financial cost of the activity.

The selected channel in the Department of State is INR/DDC. INR/DDC, working closely with the other bureau or bureaus interested in a particular proposal, draws up a draft memorandum for the Under Secretary for Political Affairs who is the Department's principal on the 40 Committee, recommending the position it believes he should take in the committee. On occasion the draft memorandum may be prepared by a regional bureau, in coordination with INR/DDC. In the ordinary run of cases the Under Secretary makes his decision on the basis of the papers submitted to him, which may be supplemented if he wishes by oral comment from INR/DDC. and from the regional bureau. The Under Secretary is particularly apt to call for oral comment from both INR and the regional bureau if the two disagree about the advisability of a proposal.

If the Chairman of the 40 Committee has decided that consideration of a proposal does not require an actual meeting of the committee, the Under Secretary's position is telephoned to the secretariat of the committee, followed by a memorandum setting forth the reasons for his decision.

Chairman PIKE. May I interrupt for a moment to ask you who is the Chairman of the 40 Committee, or is this so highly classified you can't tell us?

Mr. GARDNER. No; it is not classified at all. It is Dr. Kissinger.

Chairman PIKE. Thank you.

Mr. GARDNER. The secretariat submits this and corresponding material from the other principals to the Chairman of the committee. By memorandum and phone it communicates the final decision to the principals.

The Chairman may, on the other hand, decide that a problem deserves to be considered in an actual meeting of the committee. The decision reached, at the meeting itself, or subsequently, is recorded by the secretariat and later formally communicated to the principals.

If an approved program continues for more than a year, CIA is normally required to render an annual progress report to the committee. In some instances, reports have been required every 3 months; on rare occasions, more often.

I would be happy to try to answer any questions this committee may wish to raise regarding 40 Committee procedures.

Chairman PIKE. Thank you, Mr. Gardner. The committee will now proceed under the 5-minute rule. I want to caution the members that some of the questions they may want to ask will get into classified information, in which case we will go into executive session; but I would suggest we can proceed in open session for a while.

Is it the experience of either of you gentlemen that covert operations can be undertaken without the prior approval of either the National Security Council or the 40 Committee if the President and the Assistant to the President for National Security Affairs decide to do so? Would this at the least not be a highly irregular procedure?

Mr. GARDNER. It would be a procedure which would be in my view a violation of the rules under which the successive administrations who have managed the 40 Committees held themselves forth as conforming to.

Chairman PIKE. Are you aware of any situation in which the 40 Committee and the National Security Council were told about covert actions after-the-fact rather than their being consulted and asked for their approval in advance?

Mr. GARDNER. Mr. Chairman it is in the nature of the subject that I wouldn't necessarily be aware of things that I might not have learned about in the process of my work. I learned toward the end of my term in the Department of an operation that I myself had never known about before. What I am unable to answer is whether or not this particular operation had either been cleared or had been consulted about in advance with our principal—the State Department's principal—or whether in effect it had been announced to him after it was decided and carried out.

That I myself was not aware of the operation is not a necessary indication, of course, that the formal committee procedure was not followed.

Chairman PIKE. But you would deem it to be highly irregular?

Mr. GARDNER. Unusual certainly.

Chairman PIKE. Do you want to comment on that, Mr. Watts?

Mr. WATTS. Yes, Mr. Chairman.

First of all, I should say in my own responsibilities on the National Security Council I had virtually no relationship whatsoever to the activities of the 40 Committee. That was partly by my own choice. But I think as a general comment it might be worth just trying to describe a little bit the atmosphere under which the National Security

Council—and now I am talking in the larger terms, not just about the four statutory members but how the entire National Security Council system process worked.

During the year that I served there—and I think this is a tradition that went way before the period 1969 to 1970, and I presume continues to the present day—there was an extraordinary emphasis on security, on secrecy, on limiting the number of people who were brought into considerations of highly sensitive matters, and this does not have to apply only to covert activity but just to general policy considerations.

There has been a long-standing concern about the fear of leaks of activities being considered that will be released too early to the public, will get out, that opposition can be generated and kill them in advance.

In this sense it was not at all unusual for senior members of the National Security Council staff themselves not to be aware of many activities, many policy considerations that were then underway.

Let me give a specific example and one in which I think the tremendous emphasis on secrecy was at least to some measure justified.

When President Nixon decided that he wanted to introduce a very fundamental change in our policy toward the People's Republic of China, the whole process of deciding how to go about this—of considerations of what steps to take, of contacts to be made, of overtures to be made and so forth—was kept to an extremely narrow circle.

I, for example, was not aware of a great deal of this for quite some time even though in my role as staff secretary and senior staff member it might have been logical that I could have known about that.

There was a fear of reaction in this country against such a move, great concern that if such a development became public too soon that opposition to it would be generated and that the whole move would have been aborted.

I think that in answer to your original question, it would not be unusual to extrapolate from this that other actions could have been taken without getting into the full process—

Chairman PIKE. I am not talking so much about diplomatic relations. I am talking about covert operations.

Mr. WATTS. I understand, and as I said before that is an area—
Chairman PIKE. Would the gentleman from Connecticut yield me some time?

Mr. GRAIMO. I ask unanimous consent to yield my time to the chairman.

Chairman PIKE. Is there objection?

Without objection the chairman is recognized for 5 additional minutes.

Go ahead.

Mr. WATTS. I was just going to say that I did not have a direct involvement with covert activity and therefore cannot really speak to that. I am only trying to suggest that on the basis of the way that things operated in general it seems to me that would have been perfectly possible.

Chairman PIKE. Did the National Security Council have any bylaws?

Mr. WATTS. Bylaws?

Chairman PIKE. Any rules or regulations?

Mr. WATTS. Not that I was aware of.

Chairman PIKE. Did it have any requirement that a quorum be present at a meeting?

Mr. WATTS. Not that I was aware of, although at every meeting of the National Security Council I attended the President was always there, the Secretary of State was always there, and the Secretary of Defense was always there. I don't recall any meeting in which those three members were not present.

The Director of the Office of Emergency Preparedness may or may not have been there. The Director of Central Intelligence always attended, the Chairman of the Joint Chiefs always attended. In terms of a meeting without a quorum of three or four, that never happened.

Chairman PIKE. Did you ever hear about a meeting of the National Security Council which was reported in the press to have taken place at the time of the Arab-Israeli war, and did you ever hear who was present at that meeting?

Mr. WATTS. Yes, I read of that, Mr. Chairman. As I understand it, two of the four statutory members were present—the Secretary of Defense and the Secretary of State, and the Secretary of State also attended in his capacity as Assistant to the President for the National Security Affairs.

As I said before—

Chairman PIKE. And the story which we heard about the meeting, to the effect that those present were Kissinger, Schlesinger and Kissinger, is a relatively accurate statement. Is that correct?

Mr. WATTS. As far as I know that is correct.

Chairman PIKE. So they don't have any bylaws or any requirements for a quorum or anything like that as far as you know?

Mr. WATTS. Not as far as I know, sir.

Chairman PIKE. How many employees does the National Security Council have—or is that classified?

Mr. WATTS. No; I don't believe that is classified.

Chairman PIKE. Roughly?

Mr. WATTS. When I left—and I believe it is approximately the same number today—it was about 120, 110. It is important to describe that. Could I just fill in a little bit on that?

Chairman PIKE. Certainly.

Mr. WATTS. That number includes both professional and support staff. The number of professional officers on the NSC staff when I was there was approximately 45. That is not a large number. As I said in my statement, if anything the NSC staff is understaffed.

Because of the requirements of the situation room in which cable traffic has to come in 24 hours a day, there have to be people on shift work so that you usually have a number of enlisted men from the Army or the National Security Agency on detail who work on shift around the clock.

The actual number of senior staff members then was about 40 to 45. I might add in terms of the pressures on the staff, they are absolutely enormous.

Chairman PIKE. Believe me, I don't doubt that for a minute. I am not faulting the size of the staff. I am trying to find out how big it is.

What is the budget?

Mr. WATTS. The budget that I testified for, I believe, was \$26 million.

Chairman PIKE. \$26 million.

Mr. WATTS. I hope that is right. It is about that. That was 5 years ago, and that is my recollection.

Chairman PIKE. Mr. Gardner, you stated that the 40 Committee meetings regarding covert operations would go into the estimated financial cost. Who would make those estimates?

Mr. GARDNER. The estimates in the original instance would come out of CIA.

Chairman PIKE. Now, did you ever look into how those estimates were derived? Let's say we are talking about some sort of a paramilitary operation. Did the cost figures include the cost to the Federal Government of weapons or weapons systems?

Mr. GARDNER. Yes, Mr. Chairman.

Chairman PIKE. Or the cost to the CIA of the weapons and the weapons system?

Mr. GARDNER. Distinguishing the two?

Chairman PIKE. Absolutely distinguishing the two. Haven't you found that the CIA gets things cheap—sometimes from other agencies of the Government?

Mr. GARDNER. Mr. Chairman, I am trying to recall if I remember a breakdown having been made in any of the memorandums, of course with the distinction that you have just made. I am hard pressed to recall instances, although I cannot say they did not exist. I don't recall any.

Chairman PIKE. So you don't know how these cost estimates were arrived at?

Mr. GARDNER. I know, for example, Mr. Chairman, that when operations were proposed that did not deal with paramilitary operations, there would be a certain sum set aside for a particular phase of activity, another sum for another phase, and so on, so that we were given some notion, not only how much money would be spent on the operation, but to whom the money was supposed to go.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

If you want some additional time, I would be pleased to make a request.

Chairman PIKE. No; I am contented for the moment.

Mr. TREEN. All right. I have about four questions here.

First, Mr. Watts, on page 11 of your statement you talked about your recommendation that there be additional representatives on the National Security Council who could bring some domestic policy input.

Isn't it true that the President will invite Cabinet officials or others to NSC meetings whenever he feels it is necessary—such as, for example, the Secretary of Agriculture, Mr. Butz, when there is a grain problem involved?

Mr. WATTS. Yes, sir, he does. I can give one example. In the deliberations on Latin American policy late in October of 1969, the NSC meeting was attended, in addition to the regular members, by the Secretary of Commerce, Secretary of the Treasury, Secretary of Agriculture, and many others.

I think there is an important distinction, Mr. Congressman. The way that bureaucracies operate, their point of view will only be put forward really strongly if their principal officer is by statute a member

of the body on which he sits. If he comes in on a sort of ad hoc basis, he is likely to have a briefing paper or papers prepared just for that meeting, but this is not a conscious part of his ongoing official capacity.

He also is not likely to have the staff geared to help him for National Security Council meetings themselves.

As the Council is now constructed, all deliberations have a heavy, purely foreign policy bias without consideration of domestic consequence of domestic policy results.

It seems to me, and the reason I make this recommendation is, that by making an officer a member of the Cabinet with domestic responsibilities as a statutory member, it is going to mean he is going to be staffed for that role and will make a much stronger case when he is concerned with issues as they impinge on domestic as well as foreign affairs.

Mr. TREEN. I understand your point there, and I don't necessarily quarrel with it, but I did want to make the point that he brings in particular Cabinet officials to his National Security Council meetings as he deems appropriate.

Mr. WATTS. Absolutely.

Mr. TREEN. And after all it is an advisory body to the President.

Mr. WATTS. That is correct.

Mr. TREEN. Next, you recommend after the next Presidential election that legislation be introduced that would preclude the Assistant to the President for National Security Affairs from serving concurrently as a member of the President's Cabinet. Why do you suggest waiting until after the next election if it is a good idea now?

Mr. WATTS. I think that introducing such legislation at this time would be seen and accepted as a direct attack on Dr. Kissinger.

Mr. TREEN. I think you are right. Let me go to the next question.

Mr. WATTS. I have no interest in supporting such a move.

Mr. TREEN. All right.

Mr. Gardner, would you offer any comments as to the appropriateness of the Chairman of the 40 Committee being the Secretary of State—the same person occupying both positions?

You were in the Department of State; what is your view as to the effectiveness of having the same man serve in both capacities?

Mr. GARDNER. I don't think it is a good idea. My own views on the ideal organization of the 40 Committee would involve its being chaired by a member of State, not the Secretary, with appeals from the decisions of the committee lying to the Secretary of State and with the possibility of appeal to the President if any of the principals seriously object to the decision of the Secretary.

I think the combination of Secretary and Chairman can lead to confusion and to conclusions, perhaps unjustified, that the Chairman is acting in the interests of what the Department regards as correct.

Mr. TREEN. All right, sir; let me ask you if I may, because I have very little time left, the 40 Committee was created when?

Mr. GARDNER. The 40 Committee, sir, is a successor to the 303 Committee, which in turn was successor to the Special Group, which in turn I believe began—this antedates my experience—but again I believe in the midfifties.

Chairman PIKE. The time of the gentleman has expired.

Mr. JOHNSON. I would like to ask unanimous consent to yield such time as he may consume of my time to Mr. Treen.

Chairman PIKE. Is there objection?

Without objection, Mr. Treen is given another 5 minutes.

Mr. TREEN. I hope I won't use all of Mr. Johnson's time.

I want to quickly now ask how the decisions were made for covert activities prior to the creation of the 40 Committee.

Mr. GARDNER. The procedures governing the 40 Committee are approximately the same as the 303 Committee and the Special Group.

Mr. TREEN. Give me some dates when these were.

Mr. GARDNER. I think I wasn't clear. In the midfifties, the Special Group was organized. Some time after that—

Mr. TREEN. Under President Eisenhower, midfifties?

Mr. GARDNER. Yes; it would be 1955, 1956, 1957, somewhere in that period.

Mr. TREEN. This was a committee to approve covert activities?

Mr. GARDNER. Yes. Following that, the 303 Committee, which had almost precisely the same functions—

Mr. TREEN. When was that created and by whom?

Mr. GARDNER. In the sixties I believe, early sixties; and then the 40 Committee, successor to the 303 Committee, with much the same charter and procedure—

Mr. TREEN. Created by President Nixon?

Mr. GARDNER. Right.

Mr. TREEN. All the Presidents over the last couple of decades have had such a mechanism?

Mr. GARDNER. Yes.

Mr. TREEN. Can you tell me, has the use been essentially the same by the various Presidents?

Mr. GARDNER. My belief or my knowledge is that from 1966, when I first joined the organization which was interested in 40 Committee procedures, until the current time, the incidents of 40 Committee operations, covert operations, has fallen steadily, steadily; and indeed when the number that is proposed and carried out today is compared to that which were proposed and carried out in, say, 1966—

Chairman PIKE. Would the gentleman yield?

Mr. GARDNER. The falloff is radical.

Mr. TREEN. Are you talking about the incidence of the use of the 40 Committee with respect to proposals, or of the number of covert activities themselves declining?

Mr. GARDNER. I am sorry; I think they are approximately the same, as I do not believe that the incidence of major covert operations carried out without the approval of the 40 Committee or its predecessor organizations, I do not believe that many occurred; so if 40 Committee operations, approved 40 Committee operations, fell off in number considerably over a period of time, this means that the number of covert operations carried out also fell off to almost precisely that corresponding degree.

Mr. TREEN. I thank you, and yield to the chairman.

Chairman PIKE. You asked my question. Mr. Stanton.

Mr. STANTON. Thank you, Mr. Chairman.

Mr. Watts, is there any problem with leaks in the National Security Council?

Mr. WATTS. None that I have been aware of.

Mr. STANTON. You have no knowledge of any difficulty that the National Security Council has experienced in the last 5 years with leaks?

Mr. WATTS. You mean from within the staff?

Mr. STANTON. Well, either with the staff or with the parties who are members of the Council.

Mr. WATTS. Not that I am aware of, sir.

Mr. STANTON. Relative to the SALT talks which were discussed at the National Security Council, was there any difficulty with leaks?

Mr. WATTS. Not that I recall.

Mr. STANTON. Was there any time that Dr. Kissinger complained about leaks in the National Security Council?

Mr. WATTS. Yes; there were occasions when there were stories that were printed in the press that caused a lot of commotion.

Mr. STANTON. What type of commotion?

Mr. WATTS. Well, concern that somebody may have leaked something, but the people were asked, and they said no.

Mr. STANTON. People were asked and they said no?

Mr. WATTS. Right.

Mr. STANTON. Did that cause any recommendations or reorganization?

Mr. WATTS. No; I think probably the only thing that happened was that the emphasis on security and secrecy and the narrowing of number of individuals involved in various policy discussions tended to get narrower and narrower.

Mr. STANTON. Mr. Gardner, how often did the 40 Committee meet between 1972 and 1974?

Mr. GARDNER. In the period of about 2 years—the dates that you have mentioned—I believe the committee did not meet at all.

Mr. STANTON. Did not meet at all?

Mr. GARDNER. Did not meet at all.

Mr. STANTON. Mr. Gardner, isn't it true that between April 1972 and December of 1974, nearly 40 sensitive covert activities were approved by the 40 Committee without a single meeting?

Mr. GARDNER. Without vouching for that precise number, Congressman Stanton, I think that would be a fair estimate.

Mr. STANTON. It is a fair estimate. Then who was approving all of these covert activities?

Mr. GARDNER. Let's take a moment here. As I indicated in my statement, very often, and indeed consistently over the period that you have mentioned, the 40 Committee principals would be circularized with a memorandum proposal to the 40 Committee and within each concerned agency—

Mr. STANTON. Did somebody walk around with a memorandum?

Mr. GARDNER. No; for example—

Mr. STANTON. Did they pick up the telephone and call them?

Mr. GARDNER. I have to answer that seriatim; I am sorry. The memorandum would come from the agency and be staffed out within State cover memorandums, discussions with CIA, among ourselves; we go forward finally with our own recommendations within State of what we believe the position of the Under Secretary should be.

If the Chairman of the 40 Committee decided that discussion of that particular item did not warrant a meeting of the committee, he would ask for what we called a telephone vote. This telephone vote would be given ordinarily through us [INR/DDC] as the channel.

We follow it with a memorandum setting forth the reasons for our principal's point of view. There would be no meeting of the committee—no debate, discussion—merely submission of points of view from the principals and a decision taken to the White House.

Mr. STANTON. Mr. Gardner, you give me the impression that this is a very orderly process in which apparently you had circulated memorandums and had discussions back and forth and in which final conclusions were made. Is that correct?

Mr. GARDNER. I believe it is.

Mr. STANTON. How are the 40 Committee minutes kept?

Mr. GARDNER. The 40 Committee minutes varied in content and fullness over the years. When I first joined the office——

Mr. STANTON. In what form are they kept?

Mr. GARDNER. The secretariat of the committee in the earlier part of my time in this office drew up fairly full verbatim accounts of what various people said in the meeting. I understand some concern arose as to the fullness of these minutes from a security point of view. Toward the end of my period in the office, the minutes would merely be a statement of the decision that had been reached.

Mr. STANTON. A statement of the decision?

Mr. GARDNER. Yes; a statement of the decision.

Mr. STANTON. Do you think those minutes were well kept?

Mr. GARDNER. The minutes were inadequate for our purposes as part of the machinery in the Department. They may have been accurate as far as they went.

Mr. STANTON. Who were they disseminated to?

Mr. GARDNER. To the principals of the 40 Committee.

Mr. STANTON. If they were inadequate in terms of your purposes, might they not be inadequate in terms of those people to whom they were disseminated?

Mr. GARDNER. That might follow.

Mr. STANTON. Then is it a logical conclusion that the 40 or so covert acts that were approved might not have been clearly disseminated to all of the principals involved in the decisionmaking process?

Mr. GARDNER. The reasons underlying these may in some instances have been inadequately communicated to the principals.

Mr. STANTON. In other words, I might have been sitting on the 40 Committee with covert activities being approved of which I might not have full knowledge——

Mr. GARDNER. Of the reasons underlying the decision.

Mr. STANTON. So it was the principal head of the 40 Committee who was making those decisions. He was fully informed, was he not?

Mr. GARDNER. He was fully informed and I think in the overwhelming majority of cases was the man who made the decision.

Chairman PIKE. The time of the gentleman has expired. Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

How large is the 40 Committee staff, Mr. Gardner?

Mr. GARDNER. The secretariat has one officer and one secretary.

Mr. KASTEN. Are the personnel on the secretariat taken from the NSC staff directly or from agencies of the intelligence community?

Mr. GARDNER. I don't think they come from the NSC staff. I think they are seconded by the intelligence agency.

Mr. KASTEN. Isn't the staff made up typically of a CIA employee from the Operations Division? Doesn't this present an objectivity problem?

Mr. GARDNER. He may have a problem. I know of no circumstances in which that problem has gotten the better of him. I think for purposes of general administrative health it would be good if from time to time the secretariat were manned by representatives of other agencies that are positioned on the committee.

Mr. KASTEN. I did not understand your answer. You said you think he has an objectivity problem from time to time?

Mr. GARDNER. I say I think it is almost inevitable that he might have a problem, but I have never known any of the people who have held that job to have fallen prey to the pressures that conceivably might have rested upon them because of their membership in the intelligence agency.

Mr. KASTEN. Which member of the 40 Committee generally has the most influence over committee decisions?

Mr. GARDNER. The Chairman.

Mr. KASTEN. The Chairman?

Mr. GARDNER. That is a mild statement of the position.

Mr. KASTEN. Does the State Department have a staff assigned to the 40 Committee to insure a strong "devil's advocate" role, if you will?

Mr. GARDNER. Within the Department, I have to say the staff is strong, because I was part of it. When the Under Secretary, for example, goes to a meeting he may take one man with him—ordinarily from INR, ordinarily the Director of the Bureau of Intelligence and Research. He ordinarily will not be accompanied by particular experts in the areas under discussion.

Mr. KASTEN. Mr. Gardner, are State Department intelligence officers always, to your knowledge, made aware of covert operations?

Mr. GARDNER. No. I can remember two episodes, the one I mentioned earlier that I found out about just as I was leaving the office and an earlier one which I had known nothing about. Again, I must repeat that this does not mean that the State Department principal on the committee did not know about it. Presumably he did.

Mr. KASTEN. If the 40 Committee is not staffed to conduct independent assessments of CIA proposals—if the State Department is not equipped to play a powerful devil's advocate role—who is so equipped? Who reviews the decisions of the 40 Committee?

Mr. GARDNER. Congressman, I do not believe I said—and if I did, I didn't mean to—that the State Department is not equipped to play a strong role. I think it should play a stronger one through organizational changes.

These proposals are analyzed carefully and given very serious thought by highly competent people in the Department.

Mr. KASTEN. Who reviews the decisions of the 40 Committee?

Mr. GARDNER. The President.

Mr. KASTEN. Under what circumstances can the 40 Committee approve a covert action project without the direct personal knowledge and approval of the President?

Mr. GARDNER. I'm sorry, I would not know.

Mr. KASTEN. What about the 40 Committee bypassing the National Security Council? Under what circumstances could the President and the 40 Committee make a decision which would not include the National Security Council?

Mr. GARDNER. I would have to inquire of Mr. Watts, Congressman Kasten, if the term "bypassing" the National Security Council is an appropriate one. I don't know that the committee is really supposed to go through the National Security Council before moving to the President.

Mr. WATT'S. Mr. Kasten, I would respond to that by saying I believe I attended about 20 to 25 meetings of the National Security Council and to the best of my recollection no 40 Committee action was ever discussed in a meeting of the full National Security Council.

Mr. KASTEN. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Gardner, if, as Mr. Stanton indicated, a lot of this decision-making is done over the telephone with regard to the 40 Committee, some of the discussion involves activities that are clandestine operations the CIA has been involved in—some of which we know, without getting into detail, could have been potential risks militarily to this country as well as embarrassments on moral grounds.

Where is the oversight coming to the President of the United States? Where is the objectivity? What input does he get from a devil's advocate, so to speak? If it is done by phone, the committee is not meeting. The membership is made up of people who are not getting into these things deeply. It seems to me they just run them through and there are one or two people making decisions that could be very damaging to this country.

Mr. GARDNER. I think the decisionmaking process within the committee has been—its vitality—has been attenuated by the fact that meetings have so rarely been held, particularly during the period that has been mentioned.

At the risk of going on a bit, I would say that within each department, certainly speaking for State, the consideration of these problems has been ordinarily thorough and painstaking.

What I'm totally unable to comment upon is whether the fruits of all this labor and thought are perused with care and discussed.

Mr. MURPHY. We really do not have any input by anybody in the State Department other than Mr. Kissinger now that he is Secretary of State; do we?

Mr. GARDNER. We have input through the memorandums. For example, the work that is done on a proposal in the State Department—producing as it does or culminating as it does in the decision of our principal—is communicated to the Chairman of the 40 Committee through the secretary of the committee not only by a phone call, but also by a memorandum which sets forth the reasons for our principal's decision.

Mr. KASTEN. Will the gentleman yield? That memorandum comes before or after the decision is made, before or after the telephonic inquiry or whatever?

Mr. GARDNER. The telephonic vote, for example, of the Department is immediately after the decision within the Department is made. The memorandum is immediately prepared.

Mr. KASTEN. That is an interesting choice of words. "Immediately after the decision within the Department is made."

Mr. GARDNER. After the decision in the Department is made of the position the Department will take on this. Is this not clear? If it is not clear, I will be glad to go further.

Mr. KASTEN. I thank the gentleman for yielding.

Mr. MURPHY. I think what the gentleman is getting to, and what I would like to get to, is that the decision is made and there is very little input into it. Then they write a memorandum about what they are about to do. That is usually what our experience has shown us through closed session.

The project is either three-quarters of the way finished or already completed when the oversight committees in the Congress get to look at it.

Mr. GARDNER. I don't believe, Mr. Murphy, that decisions are reached in the 40 Committee by the Chairman or by whomever does make the decisions over there if a meeting has not been held, in the sense that a decision is not made until the State Department reasons are received by the committee and presumably perused.

Mr. MURPHY. Aren't we just being real clever with words? We have instances of telephonic approval of clandestine operations. We have your own testimony that the committee has been meeting infrequently and we have other evidence that it has not been meeting at all. The 40 Committee and the National Security Council were set up to give, I think, the people of the United States the impression that reasonable men sit down and discuss clandestine activities, when in fact we know that it is not true.

Mr. GARDNER. I agree. I have said quite clearly that discussion and debate in our system presumably are designed to promote sound decisions. There have been many occasions in which the discussion and debate were not held. That is quite true.

Mr. MURPHY. And without getting into detail—and we will get into it in closed session—we have evidence that private citizens of the United States, somewhere along in these clandestine operations are given information that even the 40 Committee does not have, and have taken part in activities that the 40 Committee and the National Security Council don't even know about. So when you boil it down, it is a sham, really.

Mr. GARDNER. I do not wish to seem to endorse totally the statement that has just been made.

Mr. MURPHY. Did you say totally?

Mr. GARDNER. Yes; totally. I do not wish to endorse it.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I would like to follow up Mr. Murphy's questions with the brief time I have. He concluded that the whole operation was a sham. I assume that is what you disagreed with. But would you agree that a requirement of approval of the 40 Committee is a formality which has no substance, and that what we are essentially talking about is a rubberstamp, pro forma type of approval of these recommendations on the part of the 40 Committee?

Mr. GARDNER. The 40 principals do not act as a rubberstamp. They put in their opinions quite clearly.

Mr. JOHNSON. Do you have that in your memorandums? In other words, in every case of covert operation approval by the 40 Committee, have they signed on individually—for approval of the assassination plots or paramilitary operations which have taken place? Those individuals have signed on that they approve of those details?

Mr. GARDNER. No. They have put in their recommendation. Let's say that a paramilitary operation has been proposed. The principal of the Department of State sends in a memorandum saying he does not want this operation. He thinks it is a bad one. He has not acted as a rubberstamp. He is not pussyfooting. He is fulfilling his obligations. His vote may be totally ignored or may be overridden, but this does not mean he has been a rubberstamp.

Mr. JOHNSON. Where is the record that can be pursued which will indicate how these various individuals have performed?

Mr. GARDNER. We have a record in the Department of how our principal has voted. We do not have a record of how others have voted.

Mr. JOHNSON. How about the 40 Committee?

Mr. GARDNER. The 40 Committee presumably has.

Mr. JOHNSON. Do you know?

Mr. GARDNER. I just don't know.

Mr. JOHNSON. Do we have a record of how often the 40 Committee procedures have resulted in a refusal of approval of a covert operation which was in fact then stopped, and then on other occasions their disapproval was disregarded? Do we have a record of that?

Mr. GARDNER. I have no knowledge of a 40 Committee disapproval being ignored by the operating agencies. The record, I think, will be replete with instances when the 40 Committee has rejected proposals for covert operations.

Chairman PIKE. Is there a record of actions which were rejected by both the State Department and the CIA and carried out anyway?

Mr. GARDNER. No. This is surmise, but I don't recall any such. There may have been.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. To follow up the general line of questioning for both the witnesses, there is nothing, of course, in the statutes about the 40 Committee. The 40 Committee is a creation of the executive branch.

As such, I guess they can ignore it, or treat it as it is. As Kissinger said about the Nixon doctrine, "It is his doctrine and it is what he says it is." So if it is the President's 40 Committee, the President can do what he wants. However, the National Security Council is not quite in that same position. I guess we are getting to the question about what the National Security Council is. The National Security Council on the other hand is a creation of legislation and it does have an existence independent of the President. Each President doesn't recreate it. It is there. There is a peculiar language in the law setting up the CIA under which the covert actions have been taken. That law says—and I am paraphrasing now—that the agency shall undertake other activities related to intelligence, such as the National Security Council may direct. That is the language under which the covert operations are being done. But what does that mean about the National Security Council? Is the National Security Council such a creature of the President that that can be bypassed?

I would like the opinion of both you gentlemen on that.

Mr. WATTS. I have the actual wording here: "To perform such other functions and duties relating to intelligence affecting the national security which the National Security Council shall from time to time direct." That is pretty open. I think you put your finger on the point. It is up to the President.

Mr. JOHNSON. It is in your opinion still up to the President, even though that language brings the National Security Council, as an independent agency, into it?

Mr. WATTS. The President is the chairman of the National Security Council and the use that any given President makes of the National Security Council is really how he uses it. You will recall when President Nixon came into office, he made a very major thing of rebuilding the National Security Council. It had become virtually moribund in many ways in the end of the Presidency of Lyndon Johnson. It is what the President wants and what he is comfortable with.

Mr. JOHNSON. I'm trying to get your view of it. Let me ask this question: With respect to the 40 Committee and the approvals or disapprovals of whole operations, what kind of operations need the 40 Committee's approval? For example, do they also approve or disapprove or do they also sit in on covert intelligence-gathering activities? I am not thinking about covert operations now, but covert intelligence-gathering activities.

Mr. GARDNER. Certain highly specialized, sharply distinguished intelligence collection operations do fall within the jurisdiction of the 40 Committee. These are few.

Mr. JOHNSON. For example, would the U-2 flights and the *Pueblo* be the kind of things the 40 Committee would approve or disapprove?

Mr. GARDNER. Mr. Chairman, I put myself at your discretion.

Chairman PIKE. I do not want you to answer in open session any questions which you feel would be more properly addressed in executive session.

Mr. GARDNER. I think it is a terribly appropriate question for executive session and a good question.

Mr. JOHNSON. I will drop it.

Chairman PIKE. I think when we finish this round we will go into executive session.

Mr. ASPIN. Let me go into another subject. Maybe I asked Mr. Watts this question. But in your view now, a lot of these committees have been created since you left, but we had the Intelligence Resources Advisory Committee, we have the National Security Council Intelligence Committee. I guess the USIB was there.

Could you give me a rundown of how effective you think those committees are?

Mr. WATTS. That is very difficult for me to answer, Congressman, because these did come about after I left.

Mr. ASPIN. I take it from reading between the lines of what you say about the USCIC that it is not functioning because Mr. Kissinger does not have the time to devote to it.

Mr. WATTS. I would guess that is true. I think also the creation of these committees was a reflection of concern about the intelligence input coming into the White House. There was an awful lot from a lot of different agencies. A lot of this was overlapping—reports coming in,

daily roundups from several different agencies and a lot of these did overlap. This was an incredible volume.

My understanding was that the reason for trying to set up these new committees was to try and streamline this and make the flow more efficient. How efficient that has been, I do not know.

Mr. ASPIN. Thank you.

Chairman PIKE. The time of the gentleman has expired. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Watts, as you know, the National Security Act provided that CIA activities, other than those specifically described in the act, should be conducted only when the National Security Council shall from time to time direct. In response to a question about this area from my distinguished colleague, Mr. Aspin, you mentioned that it boils down to a decision of the President in terms of the direction of the National Security Council with respect to covert operations. Is that your testimony?

Mr. WATTS. No; I cannot comment on the covert side of things because I have virtually nothing to do with that. What I meant to say was that the actual performance of the National Security Council staff—the general operations day by day—was clearly delegated to the assistant to the President.

Mr. DELLUMS. Perhaps I can ask Mr. Gardner this question, then. Is it a fact that there is now considered to be a continuing authorization to CIA to conduct covert operations? Isn't that really CIA's interpretation?

If that is in fact the case, isn't that contrary to the letter of the act? Hasn't the initiative to propose acts shifted from the National Security Council to the CIA?

Mr. GARDNER. There is no question but that initiative for proposals lies principally, not exclusively, but principally with the CIA. I'm not sure, Mr. Dellums, that this is not a perfectly normal and healthy development. If we are to have covert operations at all, if we are to have proposals for these, then the proposals should arise from the organization which principally has the responsibility for covert action.

Mr. DELLUMS. Do you consider it contradictory to the letter of the act that CIA now generally interprets their mandate as a continuing one?

Mr. GARDNER. I would have to study that language a little more carefully, Mr. Dellums, to say that we are acting in conflict with the act. Certainly, the authority to authorize covert operations, the authority to approve particular operations, was not in the hands of CIA, but in the hands of the 40 Committee. I will grant there may be a problem.

Mr. DELLUMS. Maybe in executive session we will probe this problem further.

Mr. GARDNER. Fine.

Mr. DELLUMS. Mr. Watts, Mr. Kissinger is Secretary of State. He chairs the 40 Committee. He sits on the NSC. He or his employee chairs every NSC committee. Every major intelligence proposal passes through him. Of the three major national security advisers to the President—Secretary of Defense, Secretary of State, Assistant for National Security Affairs—he is two out of three people. Isn't this all

unprecedented in U.S. history? Isn't it beyond the capacity of a single individual? Doesn't it preclude necessary built-in criticism of adjudication of ideas? Doesn't it cause the NSC staff to atrophy from its own inertia, and doesn't it give Mr. Kissinger an armlock on the intelligence community? I am not asking a facetious question. What I am trying to suggest is, isn't it all down to Mr. Henry Kissinger with enormous individual power at this particular moment in the history of our country?

Mr. WATTS. Mr. Congressman, I have in my statement recommended that the role of the assistant to the President and the Secretary of State henceforth be kept separate. I completely agree with your first statement. I think this is unprecedented in the history of our country.

Mr. DELLUMS. Is it beyond the capacity of a single individual? I want to get all my questions within 5 minutes.

Chairman PIKE. Do you want to repeat your questions seriatim?

Mr. WATTS. In terms of it being beyond the capacity of a single individual, I think the answer is that up until October 30, 1975, it has not seemed to be. You know, there is a question of what is done in terms of performance of the multitude of functions that Dr. Kissinger has, he performs an awful lot of functions. Whether you agree with how he performs, that is another issue. I had my own differences. I left.

Mr. DELLUMS. I appreciate that statement. Doesn't it preclude built-in criticism or adjudication of ideas by having one person so powerful?

Mr. WATTS. I do not think it precludes it. I think it puts a tremendous burden both on him to make sure he tries to get those different views, and it also puts an enormous burden on his staff. When you are working with a man of superior intelligence, enormous energy, and drive, who knows what he wants to do, again whether you agree with it or not, it does put a tremendous burden on the staff, particularly, because the staff may be the same because of the multiplicity of roles he holds. Coming back to the other gentleman's question, in terms of the devil's advocate views, that is hard to build into the system when one person holds as many roles as it is today.

Mr. DELLUMS. I appreciate your response. Thank you.

Chairman PIKE. The time of the gentleman has expired. The Chair has tried to be a stickler for following procedures. I now have a problem in that regular procedure would require a record vote to go into executive session, and I don't have a quorum present. Accordingly, the Chair will indulge in a highly irregular procedure and announce that the committee will stand in recess until 2 o'clock this afternoon, when we will meet in executive session.

[Whereupon, at 11:30 a.m., the committee adjourned, to reconvene the following day.]

WITHHOLDING OF INFORMATION BY THE DEPARTMENT OF STATE—II

FRIDAY, OCTOBER 31, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m. in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; John L. Boos, counsel; Jeffrey R. Whieldon, counsel; Gregory G. Rushford, Cheryl Tina Yamamoto, and Fred Kirschstein, investigators.

Chairman PIKE. The committee will come to order.

We have as our witness this morning the Secretary of State and Assistant to the President for National Security Affairs.

Before we proceed, I think it would be appropriate if I made some sort of opening statement about how we got to where we are.

Since this job came my way, I have developed a fondness for a quotation from Camus, which says: "I should like to be able to love my country and still love justice."

As we have gotten deeper and deeper into this investigation, I have become increasingly unhappy about what we have learned that this great and powerful Nation is doing. For our national character to be degraded, for this great Nation to undertake cynical, hypocritical, and evil acts in order to compete with the Soviet Union, indicates to me that perhaps they have already won.

We started by looking at money, and we found it was understated even in the most secret papers.

We then looked at what we received for our money. We found that was a mixed bag—rather dubious.

We next started looking at the risks involved. We followed the dollars into some multimillion-dollar operations. We found a great variety of these operations. In some cases, the Ambassador would be cognizant. In some cases, the Ambassador would not be cognizant. In some cases, the Central Intelligence Agency had approved operations; and in some cases, it had opposed operations.

In one case, both the State Department and the Central Intelligence Agency opposed an operation, and the operation proceeded.

In no case that has come to our attention has the Special Assistant to the President for National Security Affairs opposed any of these operations which went ahead.

This brings us to Cyprus. There was a melange of different intelligence reports and activities. The Defense Intelligence Agency alleged that it had not only predicted the invasion, but had given our national leaders foreknowledge of the invasion. Mr. Kissinger has stated they did not have foreknowledge of the invasion, and this brings us to an issue of fact.

There is another issue, and that is the extent of the role which the CIA had, if any, with the right-wing elements in Greece which engineered the coup. Ambassador Tasca has told us he was not kept fully apprised of what the CIA was doing in Greece.

I believe that the Boyatt memorandum addresses these problems. I don't know that. I haven't seen it.

I do know that on September 26, the President of the United States assured Mr. McClory and me that if we would agree to certain conditions pertaining to the release of information, the publication of information, we would not have further problems on the access to information—that information would be forthcoming to this committee. That was my understanding.

A great deal of information has not been forthcoming. I don't think the history of our Republic ever records an instance when information was withheld from Congress on the grounds that it would be embarrassing to the executive branch, or on the grounds that it would tend to embarrass either American leaders or other major political leaders in America. There is always some other reason. National security is used very frequently; privileged communications have been used. There is always some other reason.

It is my personal belief—and I speak only for myself—that in most of those instances when information has been withheld from Congress, it has—as far as this committee is concerned—tended to be withheld more because of embarrassment or the fact that America would look bad if the information were disclosed than for any other reason.

Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

In addition to welcoming you here this morning, Mr. Secretary, I want to say that the reason for your appearance here is because of a motion which I made to defer action by the committee to take the subject to the floor and the necessity of receiving a so-called Boyatt memorandum.

I am hopeful you can fulfill what was my hope of supplying—as you stated in your letter to the committee—the necessary information, although I question whether or not supplying the information in some other form is going to fully satisfy the needs of this committee.

I might say that the work of this committee and the results of this committee are, in my opinion, going to make me love my country more, not less. And I am hopeful that as a result of the work that we carry on, we can improve the intelligence community and assume a responsibility which we have neglected ourselves; because I think the Congress must assume responsibility for not having conducted effective or appropriate oversight during the entire 27 years since we established the CIA.

I think the dereliction is perhaps just as much ours as it is the excesses or improprieties that may have been practiced by some of the executive branch.

I would say that certainly the things we are investigating are not of recent origin and are not for the most part attributable to this administration. I do recall the conversation with the President when you and I were both present, Mr. Secretary, in which I understood we were to get full cooperation from the administration with respect to the information we require with very few exceptions; and they were delineated as being the sources or identity of individuals involved or diplomatic exchanges, or discussions or movements of materials between the executive and the council. But beyond those limitations, I did not know there was going to be any limitation.

I am interested in knowing why there should be, or why there must be, a limitation—especially in view of the fact that Mr. Boyatt is not unwilling to provide the memorandum he prepared, is not unwilling to provide the testimony which he has offered to give to this committee; and if there is a privilege which exists with respect to Mr. Boyatt and other so-called middle-level officers in the State Department, it would seem to me that the privilege belongs to those persons in that area.

I would hope in the course of your testimony you would explain, if you are not going to be forthcoming with the Boyatt memorandum, why that should not be done.

I appreciate your desire to come here. I appreciate, also, your desire to protect the effectiveness of the State Department, to protect those in the State Department against being compelled to come before committees unwillingly with respect to what may be unpopular or dissenting views—a variety of views which they express to you. I recognize that that kind of testimony should not be compelled. On the other hand, it seems there is a broad distinction between that and a person who voluntarily and willingly supplies to a committee—or offers to supply to a committee—information which, it seems to me in this case, is extremely important to us in carrying out our investigation.

Again, I welcome you here, and I look forward to your trying to fulfill what you have described as the needs of the committee and your desire to provide the committee with all of the information which we require in this respect.

Thank you, Mr. Chairman.

STATEMENT OF HON. HENRY A. KISSINGER, SECRETARY OF STATE

Secretary KISSINGER. Mr. Chairman and gentlemen, with respect to some of the opening remarks of the chairman, I believe that some of the statements of fact are based on some misconceptions as to procedures which I hope we can discuss in executive session and explore more fully there.

With respect to the issue before us in open session, let me make one point very clear. There is no concern whatever that the Boyatt memorandum contains material that will be embarrassing to the administration, the President, or to the Secretary of State.

We are raising here an issue of principle because we are prepared to put before this committee the substance of the Boyatt memorandum, together with any other dissenting views we receive, and then the committee will be able to judge by itself whether this would be embarrassing or not. That is not the issue before us; at least, as far as I am concerned.

Let me read my prepared statement, which does not address the particular question that Mr. McClory raised, but perhaps in answer to your question, the question of why an officer who may be prepared to testify should nevertheless have to accept departmental directives, I will be glad to answer this in response to a question and I will only read the statement I have prepared and not attempt to interpolate, if that is agreeable to the committee.

I am prepared to answer your question, Mr. McClory.

I am grateful for this opportunity to appear before the committee this morning.

In my letter of October 14 to the chairman, I stated that the State Department is prepared to work with the House Select Committee on Intelligence in a cooperative spirit to find a way to accommodate our mutual interests. We understand the difficulties which confront your committee in investigating matters as sensitive and complex as these, and are prepared to do all we can to assist you in your important work.

[NOTE.—The committee's subpoena of October 2, 1975, directing Secretary Kissinger to produce "The documents and papers described as the Dissent Memorandum prepared by Thomas Boyatt as Director of Cypriot Affairs of the Department of State relating to the Cyprus Crisis of 1974"; Secretary Kissinger's letter of October 14 (referred to above); and a subsequent letter from the Secretary, dated November 3, are printed on pages 911-921 of the appendixes.]

Mr. KISSINGER. I would respectfully suggest, Mr. Chairman, that as this committee and the Department of State pursue their common objectives in support of our national interests, several important factors be kept in mind.

First, our Nation today faces serious and unprecedented international challenges. We stand poised between a return to a nuclear arms race and a move forward to a new era of nuclear arms control; our allies and friends around the world continue to look to us for material and moral support to maintain their freedom and independence; our role is crucial in the relationship between developed and developing countries; and the growing problems of interdependence—food, energy, commodities policy, the reformation of international financial and economic institutions—all demand new, sometimes revolutionary, approaches.

These goals can be achieved only if we preserve the confidence of other governments in us, and in our reliability. Foreign policy involves not only matters of great sensitivity to this country, but issues of equal sensitivity to others. Its raw material is actions and statements of American officials, as well as policies and attitudes of foreign leaders at times conveyed to us in strictest confidence. All this gives a unique dimension to the substance of foreign policy.

If the last quarter of the 20th century is to be a time of prosperity and security for our Nation, it will require the confidence of the nations of the world in the wisdom of our foreign policy and the effectiveness of

our national security institutions. And confidence, once lost, cannot soon be regained.

Mr. Chairman, I think we can all agree that the vitality and continuity of the institutions that formulate and implement foreign policy will be essential if we are to meet the challenges that face our Nation. We now have a Foreign Service and a Department of State dedicated to the national interest and prepared to serve with dedication under any administration. We must make sure that this continues. The Foreign Service must not be politicized or intimidated.

It is, of course, natural and proper for the Secretary of State and his senior advisers to be called to account for their decisions before the Congress and the American people. The conduct of an effective foreign policy requires the support of the American people who have the right to be informed about their Government's actions through their elected Representatives.

These are the considerations I have sought to bear in mind in deciding how the Department of State can most effectively cooperate with this committee. They are reflected in the proposals of my October 14 letter to the chairman. The letter was reviewed by the President before it was sent; the proposals were fully approved by him. Let me review them briefly with you now.

First, I am prepared to authorize any officer of the Department or the Foreign Service, regardless of rank, to testify before the select committee on all facts known by that officer about the collection and use of intelligence information in foreign relations crises.

Second, I will authorize any policy level officer of the Department or the Foreign Service to testify before the select committee on recommendations received by him from his subordinates, but without identification of authorship, and any recommendations he forwarded to his superiors.

And finally, I am prepared to supply the committee with a summary from all sources, but without identification of authorship, of views and recommendations on the Cyprus crisis or any other issue within the committee's jurisdiction and criticisms of our handling of it.

In my view, Mr. Chairman, these proposals—offered in a spirit of cooperation and compromise—will make it possible for the committee to secure all the necessary information as it goes forward with its investigation. There is nothing we seek less than confrontation.

I ask the committee to consider the special nature of foreign policy. Because of it, the national interest requires—and has long been recognized to require—a high degree of confidentiality in the communications between the senior levels of the Department and their subordinates.

As the committee is aware, it is our view that junior and middle-level officers should not be required to testify as to their recommendations, to their superiors. We are convinced that any other course would greatly damage the foreign policy decisionmaking process and, as a consequence, greatly damage the foreign policy of the United States.

Mr. Chairman, in addition to the more general question of what testimony should be required from junior and middle-level officers, there is the immediate issue of the dissent memorandum which this committee has requested from the Department.

If we were to agree to that request, we would risk grave and perhaps even irreparable harm to the very mechanism—the dissent channel—which has been established to encourage officers within the Department to give me and my successors the hard, blunt and critical comments we seek.

I recognize, Mr. Chairman, that these considerations complicate a congressional inquiry—particularly when that inquiry is focused on information of a particularly sensitive nature. But I am confident that the procedures I outlined in my letter of October 14—cooperatively implemented—will allow all the relevant evidence to come forward.

Mr. Chairman, I am here today so that I may personally assure the members of this committee of my deep desire to accommodate the interests of the legislative and executive branches of Government. I ask only that you recognize that as Secretary of State I have a number of additional obligations.

On the one hand, I must do all I can to assure that committees of the Congress receive the information they need to fulfill their responsibilities. But I must also assure that I and my successors are able to develop and give to the President the most comprehensive advice available as he carries out his constitutional duty to conduct the foreign relations of the United States. And I must, as well, do my duty to my colleagues in the Department of State and the Foreign Service, so that they in turn may give our country their best.

Mr. Chairman, I have not come before this committee to win an argument, but to bring about a cooperative solution. The separation of powers was not intended by the Founding Fathers to produce a restful relationship free of controversy. But our country has become great because our executive and legislative branches have generally managed to settle their disputes in a spirit of cooperation; we thrive as a country, not on victories, but on reconciliations.

Thank you.

Chairman PIKE. The committee will proceed under the 5-minute rule.

Mr. Secretary, what is wrong with your proposal is this: One of the reasons that our intelligence was so bad at Cyprus was because we relied on an untested source, not on better sources; and if we are deprived of the knowledge of who the sources are, the information which we get is meaningless. That is one thing that is wrong.

Another thing that is wrong is, if we get statements only from policy-makers as to what the policy is, the statements are bland and dissembling and essentially noninformative. I will give you a precise example:

Within the last week we have been holding hearings on high-risk operations. The policymaker—in this case, Mr. Colby—in his statement, said that certain differences had arisen between the Ambassador and the CIA personnel.

This was an accurate statement. It is true. But the document revealed that what the Ambassador had allegedly said to the CIA man was "To hell with your headquarters."

He also allegedly said—and this is in the document—"If you don't go along with this, I will instruct the Marine guards to take you and place you on the airplane and ship you out of here."

Now, that is an example of the tremendous difference in statements we get from policymakers and the facts which we get from people.

This Congress has been subjected to alleged "summaries" before. There is no such thing as a "full summary." There is, in the realm of law, the doctrine of the best evidence rule which simply says in a court of law you are not allowed to come in with anything except the best evidence there is.

The best evidence of what Mr. Boyatt said is not your summary of it, or anybody else's summary of it. It is what Mr. Boyatt said. The system you suggest to us simply doesn't work. If we are given information without knowledge of the sources, we don't know whether it comes from the doorman or the Ambassador and that is a ridiculous proposition. The committee cannot function in that manner.

I just plain feel, personally, that we have a right to have that document. I feel that you are alleging a privilege which has heretofore been reserved only to Presidents.

There is a law. You enunciate a principle. There is a law which says that employees of the Federal Government may not be stopped from testifying before Congress, or giving information to Congress.

Mr. Boyatt has said not only that he is willing to give us this testimony, but that it would be useful to what we are doing—that it is important to what we are doing. I see no moral, legal, or practical reason for denying us this information.

My time has expired, but yours has not.

Secretary KISSINGER. Mr. Chairman, you have raised a whole series of relatively unrelated issues. You alleged that during the Cyprus crisis the Government relied on untested rather than on tested sources. I have great difficulty understanding exactly to what factual situation that refers.

As in many crises, there were many conflicting reports and as, after many crises, it is habit of intelligence agencies to pull out those reports that support what happened and give the impression that these were the only reports that existed.

The fact is, there were many conflicting reports of many different sources.

In any event, there is no objection to an investigation of what the various sources of information were on which the Government relied in making its decision. Therefore, this is a totally different issue from the one that I am putting before this committee.

I recognize, Mr. Chairman, the danger that you pointed out. I have the same candor. You are quite correct. It is quite possible that the policymaking level has a tendency to present blander views and therefore I understand your concern. I am eager to work with the committee to find some way of meeting that concern.

On the other hand, I ask the committee to understand the problem that is faced for the decisionmaking process. If the committee has the idea that the Foreign Service is coming forward with exciting, new ideas at all levels all the time, I think you suffer from a misconception.

Our problem is to encourage a willingness to take risks and to encourage the junior and middle-level personnel to put forward daring ideas and crystal ideas, if necessary. We want to do this without these people having to worry that later on they will be held to account for the views they express.

Now, I recognize, Mr. Chairman, that this committee is not after the junior- and middle-level personnel. Upon some reflection, I even have some rough idea whom this committee is after. So I am not here to protect Mr. Boyatt who, when he was in charge of the Foreign Service Association, showed great capability of protecting himself. I am concerned, however, with establishing a precedent in which precisely those officers who have to come up for periodic confirmation can be called before committees to testify as to their views and recommendations, and therefore create a potential later on—not by this committee—of the kind of investigation that, in my view, will stifle initiative and hurt the decisionmaking process.

I am willing to sit down with members of this committee to see what we can work out that protects the anonymity of those who make the recommendations, and at the same time gives the committee as unvarnished statement of their views as can be generated.

And, if I don't have the best answer to the problem, I am willing to listen to other proposals.

But I would like the committee to consider that this is not a trivial problem; that the Foreign Service is one of the elements of continuity we have in our foreign policy; that with the periodic changes of top officials, it is important that junior- and middle-level officers can write their memorandums without having to worry how they will look 5 or 10 years from now and let those who have to make the policy decisions assume the responsibility.

Now, I have deliberately not asked the President to exercise executive privilege, nor am I asserting a secretarial privilege. That is a matter that would have to be determined by the courts if it ever got to that point.

I have a problem that affects the integrity of our policymaking process. You have a problem of getting the best information and I would like to work this out and I would like us both to recognize that we have a problem.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman. I will probably have multiple questions, too, which you may be able to answer after my time is up.

My observation up to the present time has been that we have an outstanding intelligence agency, outstanding intelligence activities, particularly out in the field. There are a great many dedicated people—literally thousands—who risk their lives and their safety to gather information for our country in order that we can make the best decisions possible at the policymaking level and at the highest levels of Government; and the problem that seems to be developing as we go along is that the evaluation of the intelligence that we receive bogs down and does not seem to be at the same high level as is the intelligence-gathering capability.

There is some evidence that there is too much intelligence or overlapping of intelligence, or not enough staff at the level that makes the evaluation and affects the decisionmaking process. That poses one problem.

Now, the further problem I have is that you are coming to our committee urging reconciliation—and may I say the best way to reconcile our problem is to let us have the Boyatt memorandum. This is a

memorandum which Mr. Boyatt is not unwilling that we have. It would certainly be the best evidence; and, if you want us to have the best information, it would seem to me that this would be the manner in which we could get that information—to get the text of what he was recommending and which he is not unwilling for us to have.

I don't think this would establish any precedent which would interfere with the conduct of the Department or put any middle-or-lower-level individuals in the Service in jeopardy or in fear that they were going to be compelled to come before a committee or that everything they said was going to be aired. That is not the thrust of what we are requesting at this time.

While you state you want to avoid a confrontation, actually we have merely deferred the confrontation. As I indicated earlier on my motion, we deferred action on the threat of confrontation, at least until next Monday, and with the hope that you would be able to help us resolve this.

I can at least give you some indication that the problem will persist unless we get this memorandum. I don't know how a summary or some kind of a description of it could satisfy the needs of the committee.

I might say that Mr. Boyatt talked to our staff yesterday or the day before. He was asked this question:

No one coerced you to come up to the committee to testify?

Mr. BOYATT. No.

Mr. Boos is asking the questions:

Did you have information that you believed the committee should have in performing its function of reviewing intelligence performance?

Mr. BOYATT. Yes.

Mr. Boos. Was it your view that the committee should have that information?

Mr. BOYATT. My personal view?

Mr. Boos. Yes.

Mr. BOYATT. Yes, it was and is.

Mr. Boos. You believed that the committee would benefit from your views on this matter?

Mr. BOYATT. Yes.

Mr. Boos then asked:

Is it fair for us to say that but for the so-called Eagleburger letter you would have testified fully, not only as to what you perceived, but what you recommended be done during the crisis?

Mr. BOYATT. I don't want to put my colleague, Mr. Eagleburger, on the spot, but had I been left to my own devices, had the guidelines been "Do whatever you think is right," then the answer is yes and, as an individual, I would have done so.

Now, it seems to me here is a knowledgeable person, receiving the maximum intelligence for the benefit of our country, who is willing to come before our committee and help us decide whether or not we are using intelligence to the maximum—whether we are making some blunders, whether we are making some mistakes, notwithstanding this great intelligence capability; and it seems to me that is one of the functions we have to perform and one of the roles we have to fulfill.

That is why I am persisting in my urging you, Mr. Secretary, to make available to the committee in this instance the so-called Boyatt dissenting memorandum.

Do you want to tell me why we shouldn't have it?

Secretary KISSINGER. Mr. McClory, I recognize that I have not seen the particular testimony from which you quote. The problem with leaving it to the junior officers to decide is that these are the

officers that are in the greatest difficulty in terms of their future careers to take a stance. They are the ones who will have to go before congressional committees again and again for confirmation, for testimony, and for the normal conduct of foreign policy. If it is left to them to decide, then inevitably there is a subtle pressure that will make it very difficult for them to refuse. It will create a situation where some of them refuse and are therefore marked and some of them come forward. And those that come forward may well be those that have the strongest emotions, but not necessarily the best judgment. This, incidentally, I am not saying about Mr. Boyatt whose views I respect highly—even when I disagree with him.

It is my view that for the sake of the Foreign Service it is a dangerous principle to establish and one which, if breached, would lead to the sort of timidity and to the debilitating effect that happened in previous periods, even though I recognize this is not the intention of this committee, and even though I recognize that this committee is not interested in criticizing the views of the junior and middle-level officials.

If the Boyatt memorandum had not been identified, so that it becomes difficult to say now, "We will give you the documents without the names——"

Mr. McCLORY. That would be all right.

Secretary KISSINGER. Of course.

Mr. McCLORY. That seems to jibe with your letter and your testimony.

Secretary KISSINGER. What I am saying is, in normal situations I would have no problem in giving the verbatim criticism as long as we don't have to identify the author and as long as there is a reasonable possibility of keeping the name of the author anonymous. If there is then some special aspect in it, we could discuss that.

I believe very strongly—and it is not just an idiosyncrasy of mine—we consulted, I think, 8 or 10 senior retired Foreign Service officers for whom I can do nothing as Secretary of State, and who have nothing to gain in the Foreign Service, and asked their views of the position we had taken.

They unanimously, strongly urged us to maintain the principle that middle-level officials not have to testify as to their recommendations. As to their knowledge and perception of the facts, that is a different matter.

Mr. McCLORY. My time is up.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Secretary, we have heard from you now for some few minutes reasons why you prefer not to let these middle-level employees testify before this committee as well as other employees or any that you decide should not come here to testify. I am not interested in those reasons at this time.

You, yourself, said, if I recall, that you deliberately did not ask the President to invoke executive privilege so that you could work out this problem. Is that a correct inference?

Secretary KISSINGER. That is correct.

Mr. GIAIMO. What I am interested in from you is your legal reason, only, to deny an employee of the U.S. Government who has indicated a willingness to come up and testify before a congressional committee—what right do you have to refuse him and to refuse that committee?

Your memorandum of law by Monroe Leigh sets forth a long reason and your assistant, Mr. Eagleburger, sets forth equally long reasons, which in effect claim Secretary of State privilege—let alone executive privilege, which is a privilege limited to the President of the United States.

Now, what is your legal right?

[The memorandum of law is printed in the appendixes of these hearings on pages 903-909.]

Secretary KISSINGER. I have to confess to you that I am obviously not a lawyer and therefore my judgment as to the legal position is not decisive.

I asked the opinion of Mr. Leigh, who is a distinguished lawyer and a legal adviser of the Department of State. He told me that his legal analysis indicates that the legal right exists. He has submitted a memorandum to you with respect to that legal right.

Mr. GIAIMO. Are you telling me you don't know whether or not you have the legal right?

Secretary KISSINGER. Mr. Giaimo, I can only know what my legal adviser tells me. I have no independent knowledge—

Mr. GIAIMO. You were acting on the advice of counsel and you, yourself, don't know what legal rights you have as Secretary of State in this regard?

Secretary KISSINGER. I can't possibly know on my own without the advice of legal counsel. I am not a lawyer.

Mr. GIAIMO. Well, Mr. Secretary, I am not aware of the fact that one has to be a lawyer to be the Secretary of State of the United States or anything else.

Secretary KISSINGER. No; but one has to be a lawyer in order to know whether one has a legal right.

Mr. GIAIMO. You were claiming very basic inherent rights in the executive branch. You are the Secretary of State. I want your opinion as to whether or not you think you are acting with a legal right to deny these people the right to testify, and I want something other than your just saying "I am acting on the advice of counsel."

Secretary KISSINGER. I obviously believe that the legal opinion supplied by the legal adviser of the Department of State is a valid one, but I cannot express an independent judgment that it is my judgment that this opinion is valid.

If we cannot settle this, whether the President would then seek to exercise executive privilege, we will have to await that situation.

Mr. GIAIMO. Then is my inference correct that as of the present time you have not asked the President to invoke executive privilege because you hope to work this out?

Secretary KISSINGER. That is correct.

Mr. GIAIMO. Are you telling us that if we can't work it out you are going to have to go to the President to ask him to invoke executive privilege because that is the remedy left to you and, in the absence of the action of the President, you couldn't exercise any kind of privilege to prohibit someone from testifying?

Secretary KISSINGER. I am not developing a doctrine of secretarial privilege.

Mr. GIAIMO. That is what I am trying to get at. What is your basis?

Secretary KISSINGER. I am not adopting a document of secretarial privilege. I am making two points.

One, as I understand it, there is legal authority in the direction I can give to the Foreign Service as to testimony. Now, this can be debated and might have to be settled in the courts, which I hope very much to avoid.

The second position on which I lay more stress is the point I made to the chairman earlier, that we both have a serious problem which we ought to try to accommodate, and in the relationship between the two branches of the Government, the solution cannot always be found in a test of the legal positions of both sides, but in some way of accommodation.

Mr. GIAIMO. I understand that, Mr. Secretary. I am rushing you because, as you know, we are under the constraints of a 5-minute rule. In the statement of your Monroe Leigh setting forth your rights, the conclusion is, "I must conclude the construction to withhold classified information at the direction of the President is a valid exercise of executive privilege."

It doesn't speak about your having that right.

Now, I want to know what right you have to tell an employee of yours in the State Department that he cannot come up here to testify in the absence of the President taking some action. Not that I am conceding the President is right, you understand, but we haven't had any action by the President as yet.

My point is that your memorandum of law is based on the President's right to claim executive privilege. Now you are claiming in your letter to us that you yourself have the right to deny access.

Secretary KISSINGER. I am afraid that——

Mr. GIAIMO. You don't know?

Secretary KISSINGER. I can't go beyond what I have already said.

Mr. GIAIMO. You don't know. You will have to rely on advice of counsel; is that your answer?

Secretary KISSINGER. I am afraid that is right.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Mr. Chairman and Dr. Kissinger, we had testimony here yesterday that, between the period of 1972 and 1974, the 40 Committee did not meet formally—during the period you were head of the 40 Committee. Is that correct?

Secretary KISSINGER. As assistant of the President, I was Chairman of the 40 Committee, that is correct.

Mr. STANTON. Assistant to the President of the United States for National Security Affairs?

Secretary KISSINGER. That is correct.

Mr. STANTON. You still hold that title as Secretary of State?

Secretary KISSINGER. That is correct.

Mr. STANTON. During the period mentioned, the testimony was that there were 40 covert operations approved or acted upon by you?

Secretary KISSINGER. I would——

Mr. STANTON. And that because there was no formal meeting there apparently was some means of communication whereby they were either ratified afterward or approved beforehand but not at a formal meeting. Is that correct?

Secretary KISSINGER. First of all, I would respectfully request the chairman to defer considerations of covert operations to an executive session.

Chairman PIKE. We are not considering covert operations, Mr. Secretary; we are talking about procedures within the 40 Committee.

Secretary KISSINGER. I would still respectfully request that the decisions with respect to covert—

Mr. STANTON. I am not asking about the decisions.

Secretary KISSINGER. I understand, Mr. Stanton, but it is impossible to discuss the procedures without referring to some of the decisions.

Second, as Secretary of State, it is peculiarly difficult for me to discuss covert operation in an open session.

Chairman PIKE. Nobody asked you about any covert operations.

Secretary KISSINGER. To discuss even the organization of covert operations, I will say that the assistant to the President makes no decisions. Every operation is personally approved by the President.

Mr. STANTON. In other words, during the period of 1972 to 1974, any covert decision that was made was approved by the President of the United States?

Secretary KISSINGER. At any time; not just in that period.

Mr. STANTON. Would you tell me, Dr. Kissinger, or the committee: We had testimony yesterday that you didn't meet formally. Did you meet informally with the other members of the 40 Committee regarding these operations?

Secretary KISSINGER. Mr. Chairman, I would respectfully request that we defer this to an executive session, in which case we could give examples and explain the procedures in detail. I believe it will answer all the questions and some of the implications that you raise.

Chairman PIKE. Mr. Secretary, under the Rules of the House of Representatives, it will take a record vote to go into executive session, and I don't believe such a vote would carry at this particular time.

I would suggest to you that you can respond that you can only answer the question in executive session, but I frankly fail to see the reason why.

Mr. STANTON. I want to assure you I am very sensitive to anything involving national security. I am extremely sensitive to anything that affects the security of the Government and I do not intend to go into any of those areas; but I would like to establish for the American public—and I think they need to know—how the formal decisions on covert operations have been made in the past. I think it is essential that they understand that.

Secretary KISSINGER. I believe you have had Mr. Colby here very frequently and I must respectfully decline to answer questions regarding covert operations in open session.

Mr. STANTON. Dr. Kissinger, before your confirmation as Secretary of State, in your capacity as Assistant to the President for National Security Affairs, you exercised many judgments that affected the security of this country. That was an extremely powerful and sensitive position.

Do you believe that any individual should hold such a high or powerful position without being confirmed by the Senate of the United States?

Secretary KISSINGER. First of all, I think it is important to understand that an assistant to the President who carries out the spirit of his mandate will not substitute his own judgment for that of the President, and this is the difference between an assistant and those who have institutional responsibilities of a continuing nature.

They, too, are guided, of course, by the President's directive. But the assistant to the President should act as the alter ego of the President.

Now, whether assistants to the President should be confirmed by the Senate is a question which I frankly have not fully thought through. I recognize that the position is one of great power—

Mr. STANTON. Dr. Kissinger, I have never met an assistant more powerful than you in the position that you held during the period that you held it; and an examination of that indicates to me very strongly that such an individual should be subject to confirmation when he holds that much power.

I yield back the balance of my time.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. Secretary, I want to thank you for appearing before us today, and I hope this hearing can be useful in reaching a solution which will avoid confrontation. To that end, I would like to develop more fully that which it is you wish to restrict. I have read your letter of October 14 to the chairman several times, I think carefully, I hope dispassionately.

It appears to me that what you are attempting to do is to restrict disclosure of policy recommendations and dissenting opinion as to policy recommendations by junior level or midlevel Foreign Service officers. Is that correct?

Secretary KISSINGER. That is correct.

Mr. TREEN. Does it go beyond that, aside from the classification and national security problem?

Secretary KISSINGER. No; that is clear. That is a separate problem to which I think a solution has been found, the classification problem. Specifically, any officer of the Department who has been confirmed by the Senate, that means any Assistant Secretary, any ambassador, can testify as to his views and recommendations. I am willing to extend this to the Deputy Assistant Secretary level even though these do not require congressional confirmation, on the ground that they are so intimately tied up with the policymaking process.

So specifically, what I am attempting to restrict are the policy recommendations and views of junior and midlevel officials, but not their perception of the facts.

Mr. TREEN. All right. I believe, Mr. Secretary, and I think contrary to a number of the members of this committee, that you have a very legitimate position; that a dissent mechanism needs to be provided, and that degradation will result from disclosure, from exposure.

You have said to this committee, I think very forthrightly,

that you recognize we also have an interest to protect: To invest gate and to oversee. Now, in those circumstances, I believe that reasonable men should seek diligently, honestly, and sincerely to find a way to serve both those interests. We can have a legal argument, and carry it to the floor of the House and to the courts, but it seems to me that reasonable men should try to get on with their jobs without having the distraction and the time consumed that would result.

I think the public wants that, and I think the efficient pursuit of our mandate requires it.

With that in mind, I would like to explore—and I don't know if I can in 5 minutes—a means of our serving both of those interests.

As I understand it, you have no objection—let's relate this specifically to Mr. Boyatt or to one in his position—no objection to Mr. Boyatt testifying, himself?

Secretary KISSINGER. That is correct.

Mr. TREEN. You advanced no objection—and again aside from the classification and the security problems which we have already worked out a formula for—you have no objection to him testifying as to any facts known to him or that he believes he knows to be facts?

Secretary KISSINGER. That is correct.

Mr. TREEN. You have no objection to his saying when he received certain information, where he received it, or to whom he transmitted the information?

Secretary KISSINGER. I have no objection to that.

Mr. TREEN. You have no objection to him testifying as to the structure of intelligence gathering and the dissemination of intelligence as it affected his operation?

Secretary KISSINGER. That is correct.

Mr. TREEN. You have no objection to his testifying as to what channels of information may have been blocked to him, if that were a fact. If he was blocked or if he were told he couldn't have access to certain information, you have no objection to him telling us he was so blocked?

Secretary KISSINGER. That is correct.

Mr. TREEN. You have no objection to him testifying as to hearsay as to what intelligence he believes exists or to testifying that he obtained information at a later date which he wished he had had at an earlier time?

Secretary KISSINGER. None of this I would object to.

Mr. TREEN. You have no objection to him testifying as to what use he made of the information he received?

Secretary KISSINGER. That is correct. Anything dealing with the use, acquisition, or dissemination of factual information, I have no concern about.

Mr. TREEN. Have you any objection to him testifying to this committee as to his professional analysis of intelligence information received by him?

Secretary KISSINGER. We are going to get into a gray area at some point. I would like to insulate the process of recommendations and

proposals, and of course, many recommendations are made in the guise of analysis of facts—

Mr. TREEN. Let me reword that, sir. In the case of a member of the State Department or the CIA—of course, we are dealing with the State Department here—whose professional obligation it is to analyze, you have no objection to our having the analysis that he forwarded in proper channels of communication?

Secretary KISSINGER. The analysis of the factual situation I have no problem with.

Mr. TREEN. And, in effect, you have no objection to providing this committee with all factual and other types of information that I have tried to describe here in testimony or by providing another document, so long as it does not include the policy recommendations and the dissents from policy decisions; is that right?

Secretary KISSINGER. That is right, and I am willing to submit the policy recommendations without the name of the person who made it, if he was not a policymaking official.

Mr. TREEN. Thank you. I think your position is reasonable, and I think we should move in that direction.

Chairman PIKE. The time of the gentleman has expired. Mr. Dellums?

Mr. DELLUMS. Thank you.

Mr. Secretary, you are correct; we are not out after Mr. Boyatt. We know you, Mr. Secretary, are the chairperson of the 40 Committee. We have had testimony that the 40 Committee rarely meets and often approves operations with minimal discussion.

You occupy practically every position of importance in the 40 Committee structure—

Secretary KISSINGER. Would you repeat that last sentence?

Mr. DELLUMS. You occupy practically every position of importance in the 40 Committee structure. You are Special Assistant to the President for National Security Affairs. You are also Secretary of State. We have testimony that you have participated in directing operations which were not fully discussed, analyzed, or evaluated by those authorized to do so. In fact, sometimes they were purposefully hidden.

You have been involved in wiretaps of employees. We have heard testimony that the essence of your conversations with international leaders are not shared with the intelligence community.

You now refuse information to Congress on a rather specious basis.

Frankly, Mr. Secretary, and I mean this very sincerely, I am concerned with your power, and the method of your operation, and I am afraid of the result on American policy, and I believe the direction of operations outside the National Security Council and the full 40 Committee may indeed be contrary to law.

Would you please comment, sir?

Secretary KISSINGER. Except for that, there is nothing wrong with my operation?

Well, I think, Mr. Dellums, you have stated a large number of conclusions on the basis of testimony which was fragmentary and sometimes inaccurate, and you have repeated them as facts. You have done so with relation to matters which I have pointed out I can discuss only in executive session.

You have raised an issue that has been discussed twice before the Senate Foreign Relations Committee and in which the second time the Senate Foreign Relations Committee, by a vote of 16 to nothing, sustained my original position, and I do not believe that any point is served by going at that particular issue in a brief answer to a question.

So I can only say, Mr. Dellums, that I regret you hold these views, especially on the basis of such insufficient evidence and without having heard me in executive session, but I don't think I want to comment on that.

Mr. DELLUMS. I appreciate that, Mr. Secretary, and I am prepared with a series of questions and documents to sustain the allegations that I made.

Mr. Secretary, on June 7, 1974, a New York Times article alleges that on June 27, 1970, at a meeting of the 40 Committee on Chile, you said, regarding the election of Mr. Allende, and I quote, "I don't see why we need to stand by and watch a country go Communist due to the irresponsibility of its own people."

Mr. Secretary, did the U.S. Government carry out covert operations in Chile during the period 1970-73, and, if so, please explain?

Secretary KISSINGER. First, I cannot comment on a newspaper article about a statement I allegedly made 5 years previously or about the context in which this might have been made.

Second, with respect to any covert operations, I must maintain my original position that I am prepared to discuss them in executive session but not open session.

Mr. DELLUMS. Would you be prepared at this point to deny the involvement of the United States in covert operations in Chile?

Secretary KISSINGER. I am prepared neither to confirm nor deny them, but I am prepared to discuss it in executive session.

Mr. DELLUMS. In the period 1970 to present, have any covert operations been carried out without the approval or knowledge of the full 40 Committee, Secretary of State, or the Secretary of Defense?

Secretary KISSINGER. Well, really, Mr. Dellums, I would prefer to discuss all matters dealing with the 40 Committee—

Mr. DELLUMS. I appreciate that, Mr. Secretary. If that is your response, I simply would like to get on the record the questions I would like to elicit answers to.

Did President Nixon ever order the CIA to act without informing the State Department or the Department of Defense?

Did President Nixon ever order the CIA to act without a formal meeting or the approval of the full 40 Committee? Were the operations in Chile ordered in this manner?

And your answer is that you will answer this in executive session?

Secretary KISSINGER. That is correct.

Mr. DELLUMS. Did the United States spend money to bribe members of the Chilean Congress in an attempt to persuade them not to ratify Mr. Allende's first election? If so, how much was spent, and was this done with the full knowledge and support of the 40 Committee, and did you support that decision?

Chairman PIKE. The time of the gentleman has expired.

Mr. DELLUMS. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Secretary, from the flavor of your answers. I take it that if we were to have any meaningful discussion, it will be done in executive session with regard to——

Secretary KISSINGER. If you are dealing with 40 Committee operations and decisions, yes.

Mr. MURPHY. How about dealing with wiretap situations, Mr. Secretary? Do you have a philosophy with regard to when an Executive can order wiretaps and whether or not that authority flows down to a Secretary of State?

Secretary KISSINGER. Mr. Murphy, I am not exactly sure to what matter before this committee this question could conceivably be relevant, but I testified in my confirmation hearing——

Chairman PIKE. Will the gentleman yield?

Mr. MURPHY. I yield.

Chairman PIKE. The intelligence-gathering activities of the FBI, for example, are within the jurisdiction of this committee.

Secretary KISSINGER. On the question of wiretapping for intelligence purposes, it is my belief that the United States has to follow strictly the legal procedures that have been established and that there does not exist a special secretarial privilege for wiretapping for intelligence purposes.

Mr. MURPHY. Would you—and possibly in executive session you may want to answer this—would you go into the decisionmaking process that takes place when and if that occurs?

Secretary KISSINGER. To the extent that I am familiar with it, which is not in full detail—you can find better witnesses—but to the extent of my knowledge of how wiretapping is used for intelligence purposes, I will be glad—I am talking now for foreign intelligence—I will go into it; yes.

Mr. MURPHY. Mr. Secretary, we have had testimony, partly in executive session and partly in open session, with regard to the decisionmaking operations of the 40 Committee and the National Security Council.

We have also had some evidence where third parties—people who are not eligible to be members of the National Security Council or the 40 Committee, and are not members of the President's Cabinet—have talked to foreign leaders about the most delicate of covert operations; and I am wondering if you will discuss with us in full, in closed session, the name and the incident?

Secretary KISSINGER. I don't know anything about that, but again I would prefer to discuss this in executive session, and I would like to appeal to the chairman that if a series of leading questions are asked that imply certain answers, this really raises serious questions about the whole classification procedure that we have adopted, and I don't apply it to this question, and this is why I am not——

Mr. MURPHY. I don't mean to imply you know about it, Mr. Secretary. I would like to get some clarification on it.

Secretary KISSINGER. I have had some reports from testimony that was given here. I would be glad to discuss it in executive session.

Mr. MURPHY. I will be glad to discuss it with you, too, when we get into executive session.

Chairman PIKE. Mr. Secretary, anytime you think that a question reveals a matter which should not be revealed, you may certainly say so. But I am not going to accept the concept that you have some right not only to control your own responses but also our questions.

The committee has the broadest possible philosophical range. I don't think that there are members of any philosophy who want to reveal even in their questions anything which ought to be classified. We might disagree on what ought to and what ought not to.

Mr. MURPHY. Mr. Secretary, I don't wish to put this in the contest of an adversary proceeding, between you and the committee, and contrary to what some of my other colleagues may or may not believe, this is not an attempt to get anybody—Mr. Boyatt, Mr. Kissinger, or anybody else.

What it is an attempt to do is get the truth regarding our intelligence-gathering operations and what they cost. We have just been through a traumatic period in which certain inalienable rights of citizens of the United States have been violated.

It is the duty of this Congress to seek out those answers, to seek solutions to the problems they raise, and this is the basis for my asking these questions.

Thank you, Mr. Chairman.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. Secretary, I understand that you don't want to discuss the details of the 40 Committee, but in response to a question from Mr. Stanton, you said that the President, personally, directly approved all of the covert operations during that period of time and, to your knowledge, during all periods of time. Is that correct?

Secretary KISSINGER. I can say with certainty during the period of time that I have been in Washington and to my almost certain knowledge at every period of time; yes.

Mr. KASTEN. In testimony yesterday, Mr. Gardner—the INR-State Department and 40 Committee liaison—indicated that not all covert operations were personally, directly approved by the President. He indicated, rather, that only the most sensitive ones were approved by the President. In short, the President did not sign off or initial or stamp or whatever on every single one approved by the 40 Committee. That was the testimony yesterday.

Now, what is the case?

Secretary KISSINGER. I don't see how Mr. Gardner could possibly be in a position to know this, since it concerns the internal workings of the White House, and I would repeat my testimony: the case is that all the decisions are passed to the President for final determination.

Mr. KASTEN. His statements yesterday, I understand, were also picked up in certain articles in the press. He is simply wrong—mistaken on his statements to that question?

Secretary KISSINGER. He is mistaken.

Mr. KASTEN. I want to begin, if I can, where Mr. Treen—

Secretary KISSINGER. He just wouldn't have any way of knowing it.

Mr. KASTEN. Changing the subject, I would like to begin where Mr. Treen left off in trying to define the difference between the strict use of the dissent channel, which I personally approve of—your limiting our access to some of that dissent information; but I think

that you are defining the question in a much broader way. You are declining under the Eagleburger doctrine, where the options considered by the State Department cannot be disclosed to Congress. Aren't we, in fact, prevented from learning nearly everything because you cannot in practice distinguish between facts, opinions, and policy?

Secretary KISSINGER. The options considered by the Department can, of course, be disclosed to the Congress, and we are prepared to do so through my testimony, or the testimony of any policymaking official. The only thing we are limiting is the statement of options as they saw them by junior and middle-level officials.

Mr. KASTEN. Mr. Secretary, when the committee staff attempted to ask a State Department employee what communications had been passed to Ioannidis by the Ambassador and the CIA station, we were told—this was in an interview with Mr. Day—that we could not ask what had happened because "policy recommendations" may have been at stake.

Now isn't that absolutely absurd? He wasn't asked what the policy recommendations were. He was simply asked whether or not they communicated.

Secretary KISSINGER. I am always delighted to find a Foreign Service officer who carries out instructions with extraordinary zeal, and I think this one carried out his instructions with unusual zeal.

If it had been asked, I would not have prevented him from answering that question.

Mr. KASTEN. Well, this is important, because this was a point that was raised a number of weeks ago—

Secretary KISSINGER. If the question was—I don't know what was in these communications or whether these were all policy recommendation communications, but if the question was what factual information came to you as was passed on, and if he refused to answer this on the ground that this shaded the policy, I would think he carried out his instructions rather excessively.

Mr. KASTEN. The question was not what information or what policy recommendations were made. The question had nothing to do with the information—

Secretary KISSINGER. Would you give me the question again?

Mr. KASTEN. It was simply whether or not he had contact with the Ambassador during that period of time.

Secretary KISSINGER. I would think he should have answered that question. I certainly would not have prevented him from answering it.

Mr. KASTEN. During that interview, Mr. Eagleburger was called to provide information as to whether he should answer the question or not, and he was told not to answer the question.

Secretary KISSINGER. Look, if this is the sort of issue—I did not know about this—and this is the sort of issue which I believe we could work out with good will between your counsel and our people, because isn't—I see no reason why this question shouldn't have been answered.

Mr. KASTEN. OK, I think that is the important point. We are trying to work out the question, also, but at the particular point in time the answer was refused. If we can work in the future to avoid those kinds of problems, that is what we want to do.

Let me go even broader. For example, the National Security Council study memorandums which explain options available on a given policy have not been made available to Congress on the theory that

Congress should not pick apart the options and therefore attack policy.

How do these kinds of questions and options fit into your definition of policy recommendation?

Secretary KISSINGER. The National Security Council memoranda is a totally different issue. This is not an issue that I, as Secretary of State, control. In the past, National Security Council memorandums have been treated as privileged information of the President. These are recommendations that are made to the President and they have been treated as privileged information of the President and the refusal has always been based on those grounds. I am not exercising any judgment as Secretary of State on National Security Council documents.

Mr. KASTEN. Thank you, Mr. Chairman.

Chairman PIKE. The time of the gentleman has expired. Mr. Aspin?

Mr. ASPIN. Thank you, Mr. Chairman.

Mr. Secretary, just to follow up on some of the questions or the line of questioning that Mr. Kasten was pursuing, we will apparently be meeting next week to decide what we are going to do about this whole situation on Boyatt and the subpoena—just exactly what to do with it.

My own feeling on this issue, having thought about it for the last couple of weeks, is that Congress does, in fact, have the right to that document and to all documents. I think it is a very, very important principle that Congress does have those kinds of rights.

On the other hand, I think maybe we should not push that in the case of this particular memorandum for some of the reasons which you stated and for some reasons which you didn't state.

So, I guess I come down to this point—to feeling that the committee has the right to that piece of paper, but it shouldn't push to get it. But what I am concerned about, Mr. Secretary, is how this is all going to work itself out.

You see, you have a problem that you do not want to accept an arrangement which will set a precedent which will come back and haunt the State Department in some other time with some other committee, with some other situation.

We have a similar problem. We cannot accept an arrangement which will set a precedent as a committee here which will—sometime in some other situation in some other place—come back to haunt Congress.

And, in particular, we don't want to establish any precedent that will (a) limit Congress access to information at some future time, on some other issue, or prevent some person from testifying to Congress because he wants to. I mean we have to have a system that will not only protect the Tom Boyatts of the world but also the Fitzgeralds of the world. I don't know how we do this, but I am afraid of the kind of situation we will get into when we start delineating what is acceptable and what is not acceptable, and what can be made available and what cannot be made available.

So, it is probably true that we do not need to know the names and the recommendations of people who are making recommendations. But it may be that at some time, some future committee might be making some inquiries into—for example—the promotion policies

in the State Department; and they might want to find out whether, for example, team players are being promoted and dissenters are being passed over. And then it might be very appropriate to know who was recommending what, and what was happening. I am afraid of establishing precedents.

But to lay out your philosophy a little bit, let me ask several specific questions, because your answers will have a very strong effect on how I vote next week when this whole thing comes up.

First of all, I take it from what you said previously—let me state the three things, because my time may run out and I won't have a chance to ask all of them, but let me state them, and you can answer them.

I am first concerned about the situation of monitors, of people being sent from the State Department with the people coming over to testify. I am not talking about people who voluntarily want to have somebody with them; but what is happening now is that somebody is coming over with those people whether they like it or not. And that inhibits, I feel very strongly, somebody's ability to talk about what he wants to talk about. Somebody from Mr. Eagleburger's office sitting there is going to inhibit somebody from saying things in certain kinds of situations. That is the first thing.

The second thing I am worried about is how you define policymakers when we say who can talk about policy. You said Assistant Secretaries, Ambassadors, Deputy Assistant Secretaries. Other committees, now, and other subcommittees, have had desk officers up, and they have talked about policy. I am afraid, if we limit it that way, of what we will do to the House International Relations Committee or the Senate Foreign Relations Committee in the future.

Also, can Deputy Assistant Secretaries talk to Assistant Secretaries' policy recommendations? In other words, can Deputy Assistant Secretaries tell us what policy recommendations they made to Assistant Secretaries when you have two levels of policymakers?

The third area, is, I think, probably more important than all others. I think you said it before, but I want you to say it again: In general, leaving out the Boyatt memorandums now, because if that comes out, no matter what happens, we know who wrote that because there is so much to-do made about it—

Secretary KISSINGER. You will be very disappointed.

Mr. ASPIN. All right. In general, Mr. Secretary, is it your view that this committee would be entitled to almost any piece of paper, even those concerning policy recommendations, provided the name of the person who was making that recommendation was deleted?

Could you answer those three points?

Secretary KISSINGER. With respect to the first question on monitors, in preparing myself for this meeting and looking in more detail into some matters that I hadn't examined fully, I came across this issue of monitors, and I tend to agree with this committee, that is to say, I tend to agree that it should not be compulsory that State Department lawyers accompany officials who are testifying unless these officials request it.

I think the officials testifying ought to have the right to their own lawyer, and they ought to have the right to have a State Department official or lawyer present if they desire. But I would not insist on State

Department monitors being present during testimony unless the officer testifying requests it.

So I will modify our policy in that respect, because I think your point is reasonable.

With respect to the next question, my Deputy Assistant Secretaries testify as to the recommendations they make to the Assistant Secretaries, yes, Deputy Assistant Secretaries are free to testify both as to the recommendations they receive and to the recommendations they pass on.

With respect to the pieces of paper, I am not so concerned with insisting on a summary. We have a special problem with the Boyatt memorandum now, because it has been identified. But if this committee asked me to submit to the committee all the contrary advice we received, I would think that the best way to do it would be to give the verbatim test of the contrary advice without the names.

In the case of the Boyatt memorandum, I would now like to amalgamate it with other documents that have been received. We have a special case here.

Now, third, I must say I have sympathy for the point of view that has been expressed about Fitzgerald, and I have sympathy for the point of view that people should not be denied promotion because they have used the dissent channel or had unorthodox views, and I would think in most cases some inquiry into their recommendations might have a special place, and this is why perhaps the way to solve this issue we have before us is not to make a general rule and to settle it pragmatically, in which case you are not inhibiting the International Relations Committee, and I don't have to give up the basic position of principle.

Now, in the past, in our relations with the International Relations Committee, this issue has simply never come up, because generally they look for the highest official they can find. That official finds it in his interest to have the desk officer with him while he testifies because the desk officer usually knows the details better than the policymaking official. I don't recall an instance where the country director was asked for by a committee rather than an assistant secretary.

And so the issue, as a practical matter, has never arisen since I have been in Washington.

Mr. ASPIN. Thank you, Mr. Secretary.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Secretary, like some of my colleagues, I too have some ambivalent feeling concerning the position taken by this committee and the position taken by the Secretary of State.

I agree with your assessment of the importance of the dissent channel and the need to protect confidential communications with your career employees and to prevent them from public and political exploitation.

However, I disagree with your contention that you and you only shall have the power to decide what will or will not be passed on to Congress.

I also disagree, with some reservations, with the implication or the implied assumption that only the Secretary of State is responsible enough to protect dedicated career employees from public or political exploitation.

Now, in your letter dated October 14, you state and I quote:

The issue raised by the request for the dissent memorandum runs to the fundamental question of whether the Secretary of State should be asked to disclose the advice, recommendations, and dissents to policy that come to him from subordinate officers.

Mr. Secretary, I would also submit that there is another even greater issue involved in this situation, and that is whether the Secretary of State should be allowed to cover up waste, inefficiency, corruption, or illegal acts that come to his attention by use of the alleged privilege outlined by Eagleburger.

Please let it be understood I am not accusing you or your Department of waste, inefficiency, corruption, and illegal acts. I do not have information in hand to make such accusations.

However, the committee does have sufficient evidence in hand to indicate that our intelligence community may not be performing sufficiently. Furthermore, we have been directed by the House to find out why these failures occur.

You have offered to let policy level officers only supply the information that you feel that the committee needs. Mr. Secretary, that in effect is asking us to pass judgment on your own performance based solely on your own testimony. You would have us call only you or those Department heads immediately under you with no recourse to corroborating witnesses, facts, or documentation. Obviously, you and your policy level officials are more or less slaves to the work product and the recommendation of career employees.

Parenthetically, without the benefit of that work product, the committee has not way of making rational judgment of your own performance or that of the other policy level people.

Therefore, I feel that this situation is not only unacceptable to the committee but is also unconstitutional.

As stated earlier, I have some ambivalent feelings about the situation we find ourselves in at this time. I deploy the spectacle of having two branches of government acting like two bull elephants squaring off in the jungle clearing. Surely, as responsible men we can find some way wherein we can carry out our assignments without creating a crisis in this Government.

The committee rightfully feels that it must be able to obtain copies of any intra-agency document and hear witnesses that can give testimony germane to our investigation. The Secretary of State rightfully has a strong desire to protect the privacy of communication and dissent channels within his Department from public or political exploitation.

It appears, Mr. Secretary, that both sides of this controversy are right in what we are trying to do. I would therefore propose to both my colleagues and to you, Mr. Secretary, that we cease prosecuting our rights and work out an acceptable procedure where each side can fulfill its responsibility. You have stated a willingness to do this.

In that regard, Mr. Secretary, what specific procedures or practices do you feel would be necessary for this committee to follow in order to protect the confidential relationships between you and your career employees and still allow this committee to have full access to witnesses and documents?

Secretary KISSINGER. Well, I have stated, Mr. Milford, my best judgment on this in my letter and in my statement today. But I am not proposing this on a take-it-or-leave-it basis. I am openminded to other suggestions that this committee may want to make. And I would certainly approach these suggestions and any discussions we would have with the attitude of finding a workable solution.

I agree with your statement of the problem. I would add, incidentally, that if the charge were illegality, corruption, or similar matters, that no privilege could be exercised. I am not claiming a privilege, but my consideration would then not apply.

Mr. MILFORD. We are making no charge—

Secretary KISSINGER. I know you didn't say there was such a charge. You said specifically this was not the charge but I wanted to delimit the area which inquires into the effectiveness of policy and procedures which this committee is concerned with. This is where I have raised these considerations. But I agree with your basic statement of the problem and I have put forward some ideas.

I am very receptive to any other ideas that the committee may have of modifications of mine or other suggestions.

Chairman PIKE. The time of the gentleman has expired. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Secretary, as far as I know, unlike many of the others here, the resolution that established this committee in the first instance did not, of course, have any direction to get or to pursue any particular person or thing or department; and I think that with respect to some of the judgmental statements you have referred to made by members of the committee or by the chairman or by anybody else, there is no draft committee report. There is no final conclusion or any stated position that I have to subscribe to at this point and I may indeed not subscribe to any majority view that is here.

In order to clarify exactly what we are doing, I think it is a matter of Congress simply asking us, charging us, by a resolution to inquire as to what Congress ought to do in exercising its responsibility toward the intelligence community—period.

And in getting that job accomplished, I might add that what Mr. Aspin has stated as conditions are certainly ones that I am willing to accept, but with some additions.

And I think one of the things that has deeply offended me—and I think has been an offense to the Congress in general as we finally have been able to discuss its complications—has been the implication, the very clear implication, that your position of protecting middle- and lower-level Foreign Service officers is a position of protecting them from McCarthyism and protecting them against the kind of activities that ultimately drove the so-called China hands out of the State Department and completely collapsed their careers.

That, I think, of course, is something that was a normal journalistic pickup and I believe fully intended; and I think that, in order to clarify that and in order to remove that pall from our activities and from our ability to effect some kind of an arrangement that is satisfactory both to the Executive, to you and to this committee, we must have an unambiguous clarification of that position; that the Department of State hires, fires, promotes, and demotes, selects, doesn't select, its own personnel and that it will, without regard to political maneuver-

ing and without regard to rhetoric on Capitol Hill or anywhere else in this country absolutely protect the rights of its employees to do whatever the State Department thinks best.

And I believe if that is exercised, that unambiguous statement is made, that will go a long way toward solving many of the problems that I personally have in coming to any accommodation.

And I think it will indeed go a long way possibly toward even rehabilitating the reputations in America of those very China hands—many of whom are still extant, none of whom to any great degree have been officially cleared of the most putrid charges that were laid on them some 25 years ago.

Secretary KISSINGER. Mr. Hayes, I am delighted to make such a statement. I believe that the Foreign Service must be a career service which provides continuity to our foreign policy, which serves any administration loyally and in which promotion depends entirely on merit and that this merit not be judged by whether they follow political fads but only their best judgment of the situation as they see it and as their duty requires.

This has been my philosophy since I became Secretary of State. I like the formulation which you read out and I can subscribe to it completely.

With respect to the charge of McCarthyism, I want to make clear that I do not accuse this committee of engaging in McCarthyism and I know indeed that the chairman has a record in this regard, and from the convictions of many of the members that I am familiar with, I know that this is not the intention of this committee.

My concern is that we not establish a precedent in which junior and middle-level State Department officials, conscious of what might happen in the future, begin to slant their judgments and their reports in the direction of what is fashionable and in which documents within the decisionmaking process are written, not from the point of view of what they can contribute to the decision but how they will read 2 or 3 years from now in terms of what the mood of that moment may be.

This is my concern and this has nothing to do with the intentions of this committee, which I am not challenging.

Mr. HAYES. Thank you, Mr. Secretary. Thank you, Mr. Chairman. Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

Mr. Secretary, the purpose of this committee, at least as it was outlined to me, was to determine the cost of our intelligence community, the quality of the product and the risk involved. I would like to address myself to the question of risk.

As you have stated, you could not discuss covert operations in open session, obviously because of risk. The public is not informed on covert operations, obviously because of the risk.

But to me, as I have sat here on this committee, the genuine risk, the overall risk, and the most dangerous risk is not revealing the information but in the covert operations themselves.

We have learned of covert operations that have cost thousands of lives and have learned of covert operations that to me were extremely dangerous and had overtones of doomsday confrontations. That is the kind of risk that I think we should be concerning ourselves with.

It is necessary to reveal some of this information to reduce the amount of risk in the covert operations that have long since passed. I think what I would like us to get into is the truth of these activities and to get them out in the open where we will not be subjected to the kind of risk that I have seen this country subjected to by these covert operations.

Now, that is the main concern that I have at this particular moment and that is what I would like, Mr. Secretary, you to address yourself to.

Secretary KISSINGER. Well, I think what should be revealed—I think a procedure has been worked out between the President and the chairman which would be operative there and I think when this committee reaches the point where it wishes to make a report, I am sure that the chairman will want to discuss that issue with the President.

But my concern now is in an open session to discuss the details of these matters would in my view not be appropriate.

Mr. LEHMAN. I just wanted to bring out my priority of concern in regard to the two kinds of risks that I see we are faced with.

Secretary KISSINGER. I understand, yes.

Mr. LEHMAN. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. One of the advantages of being last, Mr. Secretary, is that most of the things worthwhile have already been said.

I think there has been obviously a very sincere desire on the part of yourself and the committee to reach an accommodation; but, unfortunately, we are still at loggerheads over what I am afraid is a very basic legal question: your assertion of the doctrine of secretarial privilege—whether or not you call it that—the right to withhold information. The right not to comply with the subpoena is ultimately what we have to deal with.

I want to emphasize to you that speaking as one member of this committee, but I think on behalf of all of us, there is no desire to get Boyatt or anyone else, particularly not you, sir. You have a very distinguished record which I think most of us admire.

But this committee is also not trying to second-guess anybody. And we are not trying to get this information for the purposes of embarrassing anybody but to try to do what is necessary under our mandate to find out about the operations of the intelligence community. Potential abuse of powers, by the Congress or by the executive branch, is also a possibility but it isn't the real question here. The real question is: Does the Secretary of a department have the right to withhold information and not honor a subpoena, and I would urge you, Mr. Secretary, to honor the subpoena so that we don't have to go on with this.

Now, I get to fulfill my function as "tail-end Charlie" and make a motion.

Mr. Chairman, I move that this committee begin the process for the release of classified information. Specifically, I move that the House Select Committee on Intelligence undertake the appropriate procedures for release to the public of the facts and information relating to certain covert actions undertaken by the United States in foreign nations; that the information and details relating to such covert activity be made public on the grounds that the activity was under-

taken in possible violation of the Constitution and of the laws of the United States by the exercise of arbitrary power by a President and that these activities involved the United States in conflict in another nation; that there are substantial questions as to the legality, propriety, and basic morality of these actions; and that the American people have a right to know when the Government commits their resources and their name in an armed conflict or paramilitary operation in another nation.

For this purpose and the consideration of other questions which may be appropriate, I move that the committee go into executive session.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton?

[No response.]

The CLERK. Mr. Dellums?

Mr. DELLUMS. No.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Lehman?

[No response.]

The CLERK. Mr. Treen?

[No response.]

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

By a vote of 9 to 1, the committee will go into executive session. It is now 12:20. Would it be convenient for you, Mr. Secretary, to meet at 2 this afternoon?

Secretary KISSINGER. Would 2:30 be too late?

Chairman PIKE. No; 2:30 would not be too late.

The committee will stand in recess until 2:30 this afternoon when we will meet in room 2154 in executive session.

[Whereupon, at 12:22 p.m. the committee was recessed, to reconvene at 2:30 p.m. the same day.]

APPENDIXES

Appendix I. — "Policy Without Intelligence"

Opinion

POLICY WITHOUT INTELLIGENCE

by Ray S. Cline

A dark, paranoid era in the processes of national government in Washington ended on August 9, 1974. President Ford has promised a more open government. It is what the country needs. Better use of intelligence would help.¹ In particular, the system of intelligence analysis and reporting, which reached such a high level of sophistication in the early 1960's, should be renovated and called upon more fully in foreign policy deliberations. I speak about this particular need for reform because I know this process best. The shortcomings of the last Administration in this area became increasingly apparent to me during my term

¹It should be noted that in this article I am speaking of intelligence only as it relates to collecting hard-to-get information abroad, analyzing it in a foreign policy context, and reporting it at the National Security Council level. This kind of intelligence preoccupies about 98 per cent of the staff, budget, and effort of the Intelligence Community at the present time. It is distinct and separate from the type of covert political action which has excited public curiosity and criticism of real or fancied U.S. covert intervention in coups or elections in Iran, Guatemala, or Chile. Such covert action was launched in Western Europe in 1948 and helped a great deal to stabilize successive Christian Democratic center and Socialist center-left parties in the face of massive Communist efforts to install Communist regimes in Italy, Germany, and France. Since then, the covert action program has dwindled to almost nothing and in my view should now be phased out because present international circumstances do not require it, and recent publicity about it makes effective covert action of the traditional kind infeasible. Circumstances may change, however, so a legislative "self-denying ordinance" would be unwise. In any case the clandestine collection of information must be continued at or above the present level.

Each issue of FOREIGN POLICY carries a guest editorial by a distinguished contributor. We are pleased to continue this series with Mr. Cline's article.

of duty as Director of Intelligence and Research in the Department of State from 1969 through 1973.

My basic recommendation is simple. We need to rebuild and use effectively the inter-agency staff system supporting the National Security Council (NSC). One of the truly creative innovations in American government in our time was the establishment in 1947 of the NSC under the chairmanship of the President, with the Secretary of State and the Secretary of Defense as key members. A crucial element in this structure was the provision that the Joint Chiefs of Staff report directly to the NSC on military policy and that the Central Intelligence Agency report directly to the NSC on foreign situations, trends, threats, and opportunities.

Truman considered the building of the NSC system one of his great accomplishments, and Eisenhower used it systematically. Kennedy streamlined its staff and its procedures but maintained the essentials of the NSC system as established in the preceding decade. It began to fall into disuse in the Johnson Administration and became an empty shell in the Nixon Administration.

A few of the simplest, most crucial steps Ford could take to open up the top-level decision-making style of his government would be to restore the NSC to vigor, make clear that he personally is in charge, and insure that he gets unvarnished intelligence analysis and estimates brought directly to his attention. To do this he would have to separate the position of Secretary of State from the position of Assistant to the President for National Security Affairs. This latter officer, the Chief of the NSC staff, should become once again a staff agent of the President, responsible solely for marshaling and organizing the presentation of essential information and views for the President. Information should be presented by the CIA, the State Department should propose foreign policy moves, and the Defense Department should recommend military policy. The Assistant

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to the President should not be a barrier or filter between the President and his intelligence and policy-recommending staffs, and he certainly should not try to make all of the decisions about national security alone or in a privileged, secret duumvirate relationship with the President.

Working in the Dark

It was fashionable in Washington throughout the Nixon Administration to scorn the staff officers in executive departments and agencies for their real or imagined sins. Henry Kissinger explained, even before he entered the Nixon Administration, why he thought it was often necessary to keep bureaucrats in the dark about important policy matters governing their own work:

Because management of the bureaucracy takes so much energy and precisely because changing course is so difficult, many of the most important decisions are taken by extra-bureaucratic means. Some of the key decisions are kept to a very small circle while the bureaucracy happily continues working away in ignorance of the fact that decisions are being made, or of the fact that a decision is being made in a particular area. One reason for keeping the decisions to small groups is that when bureaucracies are so unwieldy and when their internal morale becomes a serious problem, an unpopular decision may be fought by brutal means, such as leaks to the press or to congressional committees. Thus, the only way secrecy can be kept is to exclude from the making of the decision all those who are theoretically charged with carrying it out. . . . The relevant part of the bureaucracy, because it is being excluded from the making of a particular decision, continues with great intensity sending out cables, thereby distorting the effort with the best intentions in the world. You cannot stop them from doing this because you do not tell them what is going on.

Kissinger raised this "secrecy principle" to a fine art during his White House days. Whether by his own choice or because of

President Nixon's own obsession about opposing views and leaks, the effect was the isolation and vast frustration of all the departments and agencies dealing with the NSC. As Secretary of State, Kissinger speaks well in public of the Foreign Service bureaucracy, presumably because it is now his own. He has not yet, however, even in State, taken many senior officers into his confidence outside the small group he brought with him from his White House staff. The bulk of the staffs in State—and elsewhere—have, in general, continued to be ignored. The venomous Watergate political climate in Washington was in part due to this casting adrift from any policy-level moorings of the thousands and thousands of conscientious staff officers trying to serve the NSC and the United States but unable to do their jobs as they felt they should.

I hope Ford's Administration will benefit from the knowledge, moderation, and continuity which these working-level experts can provide to policy-making echelons in the government. They give an indispensable steadying balance to the formulation and execution of Presidential decisions. This contribution is especially important for the professional staffs of the agencies that make up the Intelligence Community—not only the CIA, but State's intelligence bureau and the Defense Department's intelligence organizations. Their sources of data and their analysis techniques are not easy for the nonprofessional to grasp at first glance. Their findings, often crucial, need explanation and interpretation in most cases if their significance is to have its full impact.

I remember Kennedy saying of the CIA that he knew it had its shortcomings but that, nevertheless, in his opinion it had "more talent per square foot" than any other institution in the country. In my three decades in the government, I have been deeply impressed with the ability and sober dedication apparent in all of the bureaucracies dealing with intelligence, foreign policy, and national security.

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This talent bank has been little used in the past few years, when all White House thinking became dominated by the Watergate cover-up operation. Worse, Nixon's attempt to misuse the CIA by getting it to support illegal domestic actions has damaged the morale and effectiveness of our intelligence system and its contribution to sound policy-making. Many of the experienced old hands—and quite a few of the more promising new ones—were cast aside or quit in disgust at the way the Nixon White House corrupted the national decision-making machinery for domestic political purposes.

In the past three years, effective communication between policy-makers and bureaucrats diminished markedly. It almost ground to a halt, just as it did between the Presidency and the Congress, between the government and the journalistic media, between the people and their public servants at all levels. Attempts by former White House officials to bully and coerce the bureaus into subservience were one of the most dangerous parts of the whole Watergate syndrome.

Restoring the System

Now that the immediate danger is past, we must restore the system to its peak performance. The task now is to use, not abuse, the professional corps of public servants.

The brilliant theatrics of airborne diplomacy and TV publicity, at which Kissinger is so skillful, show mainly surface highlights, not the substance of policy aims and achievements. The full import of such moves as the Nixon trip to Peking, the Vietnam "peace" settlement, and the Israeli-Arab oil crisis still needs to be understood clearly by all echelons in the government and ultimately by the public. To achieve this, staff exposition is essential. It is impossible to do the necessary task without an intimate exchange of ideas among the several bureaucracies working in direct response to the needs of our political leaders and a painstaking explanation of policies and decisions after they are made.

The basic remedy is to forgo some of the theoretical advantages of secret deliberations at the top in favor of keeping key staffs informed well enough to have a sense of participation and a clear purpose. If this is done, bureaucratic-loyalties would be enlisted, better staff work would reach the top, and a more enlightening rationale would surround and explain our key policy decisions to Congress and the public.

Some of our troubles come from the American imperative to do something about a problem, sometimes before it is fully understood. Our leaders like to take action because it appears masterful and is usually applauded by the media and the public. The Nixon White House grasped this fact quickly and exploited it to the hilt. If there was enough going on to dominate the news, criticism was muffled. Yet anyone who stops to analyze the steps taken can see that motion is not synonymous with progress. Staff analysts who raised this point were not popular.

Some say that the essence of diplomacy is calculated ambiguity. However that may be, the essence of staff analysis and intelligence reporting is absolute precision of perception and description. We are unlikely to act wisely as a nation if we do not know precisely what we are up against or if we ignore it. Hence the intelligence-oriented area of our bureaucracy must give our government an independent, objective, informed view of the world. This is essential to the nation's safety and diplomacy.

I am not confident that the national intelligence agencies are being fully and effectively used today. I know that some of the most sensitive information on which judgments about the future should be based has been suppressed or withheld from many officials who needed to know it. This degree of secrecy and control of intelligence by White House staff officers should not be allowed to continue.

The errors of omission and commission during the Nixon Administration in dealing with intelligence are not easy to describe in

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brief. An extended illustration with "dos" and "don'ts" for the future may be helpful.

What Happened October 24?

The case of the celebrated U.S. military alert of midnight October 24, 1973 is a revealing example of the decision-making style of the latter-day Nixon Administration. The highlights of this important decision are already in the public domain. The bureaucratic procedures followed are instructive.

The situation on Wednesday, October 24, 1973, was that a U.N.-voted cease-fire ending the 18-day Arab-Israeli war was being slowly and unevenly put into effect while Israeli forces pushed on to cut off the Egyptian Third Army on the banks of the Suez Canal. At 9:25 PM, Soviet Ambassador Dobrynin delivered a strong message to Kissinger from Brezhnev urging joint U.S.-Soviet action to enforce the cease-fire and ending with a crucial sentence applying diplomatic pressure: "I will say it straight, that if you find it impossible to act together with us in this matter, we should be faced with the necessity urgently to consider the question of taking appropriate steps unilaterally." This was the message later described by the Secretary of State as "brutal."

Kissinger had been back in the country from his Moscow-Jerusalem consultations less than 48 hours. He had been negotiating frantically with Israeli Ambassador Dinitz and Dobrynin much of that time. He reacted immediately. He called Nixon at the White House and recommended a military alert as a deterrent "signal" to Moscow. This was about 10:00 PM. Nixon, at that time, evidently gave Kissinger full authority to deal with the problem as he saw fit before any meeting convened. The President stayed upstairs in the White House family quarters. It is now clear that he was preoccupied with his White House tape problem and the political repercussions from firing Watergate Special Prosecutor Cox, which he had done in the famous "Saturday Night Massacre" a few days earlier.

At this point, a curious little rump NSC meeting was held in the Situation Room at the White House at 11:00 PM, with the principals being "Kissinger, Kissinger, and Schlesinger," as an NSC staff man said at the time. Kissinger performed in his dual capacity as Secretary of State and Assistant to the President for National Security Affairs. The new Secretary of Defense concurred with Kissinger's decision, already made before the meeting, to respond diplomatically with a strong negative to Moscow's proposal and simultaneously to issue a worldwide strategic nuclear alert. Thus, before midnight, Admiral Thomas Moorer, Chairman of the Joint Chiefs of Staff, ordered Defense Condition #3 into effect—"Troops placed on standby and awaiting orders."

The alert was harmless from a military viewpoint but intended to trigger unusual activity and communications at military bases which would come instantly to the attention of Soviet intelligence. It was a deliberate "signal" in the sense of the Kennedy era term. But notification of the NATO allies was not discussed and was very tardily and sloppily handled. The alert caused less consternation in Moscow than in Western Europe and Washington, where it was greeted with charges of trying to divert attention from Nixon's worsening Water-gate problems.

To give a semblance of regularity to decision-making, William Colby, Director of Central Intelligence, was called away from a dinner party to join in this rump NSC session. The Director of the CIA attends NSC meetings as an observer, not a full member of the Council. Admiral Moorer also attended, as did General Haig and General Scowcroft from the White House staff. It was a sharply curtailed procedure, yet it was not uncharacteristic of the pattern of 1972 and 1973, when the full NSC had fallen into almost total disuse while its various subcommittees dealt with real national security problems under Kissinger's chairmanship. The findings of subcommittees, as formulated by Kissin-

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ger, were usually presented to Nixon in a one-to-one discussion and issued as Presidential decisions under Kissinger's signature.

This style of decision-making was contrary to the intent of the National Security Act. It meant that the President did not get the benefit of a full and careful presentation of intelligence on the matters being discussed. It also meant that the President did not hear directly the views and advice of all of the top-level officials who were supposed to argue out their cases in full NSC discussions.

What was done and not done in the intelligence field to assist in making the decision to declare the alert of October 24, 1973 was even more remarkable than the streamlined procedure at the NSC.

In earlier days, the systematic updating of National Intelligence Estimates prepared under the supervision of the U.S. Intelligence Board (State, CIA, and military intelligence agency chiefs) would have provided a broad framework in which to view probable Soviet actions, the likelihood of various developments in the Arab-Israeli conflict, and the consequences of alternative U.S. options for dealing with the strategic problems thus delineated. Close dialogue between the NSC and the President would have brought senior intelligence officers and staff planners into an accord of thinking and acting, supplementing and updating the data base and insuring that all decisions reflected a complete knowledge of crisis situations as they developed. The preparation of carefully articulated and coordinated analytical and estimative intelligence papers would have meant that the CIA, State, Defense and Army, Navy and Air Force intelligence staffs knew each other's views and knew what the common reporting to the NSC was. The intelligence forecast might not always be exactly right, but it was as scholarly and objective as the Intelligence Community could make it.

The Cuban Missile Crisis

An example of the degree of close collaboration between intelligence and the NSC in

the 1960's was Kennedy's willingness to permit McGeorge Bundy to show the closely held Khrushchev-Kennedy correspondence not only to Ambassador Llewellyn Thompson for analysis and action on response but to me, as Deputy Director (Intelligence) at CIA, for thorough vetting to garner any light it shed on Soviet policies and intentions. Thus, during the Cuban missile crisis there was a constant intelligence input.

I personally brought the crucial telltale photography and subsequent intelligence estimates of missile readiness to the select crisis management group of the NSC and to the President, and observed the various policy reactions. Closer integration could not have existed. Partly as a result of this direct support, the intelligence contribution by my boss, John McCone, was excellent.

A final point to note was that the U.S. Intelligence Board agencies cooperated totally in support of the NSC and the President. For example, the first notice that the crisis was on went to McGeorge Bundy at the NSC via a phone call from me on the evening of October 15 and thence to Kennedy. My simultaneous action was to insure that General Marshall Carter, Acting Director of Central Intelligence on that day in John McCone's absence, would alert all the intelligence and policy chiefs in the Pentagon that evening. My final call was to Roger Hilsman, the State Intelligence Bureau Chief, to inform him of the evidence of offensive missiles in Cuba and to ask him to tell Secretary Dean Rusk, which he did that same evening of October 15. The next day, October 16, I went with a few of my staff officers to show the photographs to McGeorge Bundy, Robert Kennedy, and a few other senior officials, and Bundy took them to the President. The differences between 1962 and 1973 will be all too apparent—and the cost is high.

This detail is intended to show that:

1. Sharing of intelligence data and diplomatic correspondence at suitable levels is essential to careful decision-making.

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2. *Sharing of ideas and estimates among senior intelligence analysts and policy-planners is conducive to sound policy.*

3. *Basing key decisions on careful intelligence analyses is prudent and facilitates the public explanation that breeds confidence.*

A Memo for the Secretary

With these "dos" in mind, the "don'ts" become very plain upon reading the following memorandum which I drafted on October 26, 1973. I intended it for Secretary Kissinger. It was critical of his recent performance. Since it was meant to be a constructive nudge toward better procedures in the future, I did not want to deliver it through his "palace guard" staff, but in person. Unfortunately, Kissinger plunged immediately into many days of Arab-Israeli diplomacy and his travels to the Middle East and China. He was not in Washington most of the month of November. I never had an opportunity to deliver it prior to my resignation toward the end of November 1973. So I simply kept it as a memorandum for the record. This is what I wrote at that time, reproduced verbatim in hopes that my sharp comments of the moment may still nudge NSC procedures in the right direction:

I am writing to put on the record my objection to your recent public references to intelligence failures in the Mideast crisis and, particularly, my objection to your failure to consult me or any State Department intelligence officer about the technical justification for the U.S. alert on 24 October which aroused so much incredulity in the press.

First, you have repeatedly said that intelligence (INR and CIA) told you "there was no possibility of hostilities" between the Arabs and the Israelis. This is not true. The only analytical report INR gave you on the subject of "Syrian Military Intentions" was dated 30 September, some six days before hostilities broke out and before some of the most alarming evidence had reached us. What we said then was, "There are reports that Syria is preparing for an attack on Israel, but conclusive evidence is lacking. In our view, the polit-

ical climate in the Arab states argues against a major Syrian move against Israel *at this time*." While I confess this analysis did not say there would be an attack *at this time*, it was far from saying it was not at all likely.

Actually, I had hoped your efficient staff or Assistant Secretary Sisco would have called to your attention my earlier, more comprehensive memorandum on this subject, dated 31 May, 1973, which said:

If the U.N. debate of next week produces no convincing movement in the Israeli-Egyptian impasse, our view is that the resumption of hostilities by autumn will become a better than even bet. . . .

Against the backdrop of this estimate, my belief on 30 September that an attack "*at this time*" could not be conclusively anticipated was hardly complacent or reassuring. I am frank to say INR did not warn you *when* the attack was to occur, but it is unfair to say we dismissed it as a possibility. In fact, the evidence which accumulated on 4 and 5 October convinced me the chances of an attack at that time had become at least better than even. We did not have time to get you a memorandum on the subject on the morning of 6 October, as I had planned, because the flap began very early that morning and the attack a few hours thereafter.

All of this is not to say INR was right but that it was not as wrong as you have said. Beyond that, and more significantly, our calculations would have crystallized earlier and been more finely tuned to your needs if we had known about the exchanges you were having with the Russians. In retrospect, the evidence of Russian concern appears to have been the missing element in the picture. You did not tell me about it, or anyone who could have helped INR crank it into the equation. One of the main reasons for having a foreign policy intelligence analysis unit in the State Department is to permit it to form sophisticated estimates based not only on all of the technical intelligence collected by CIA and Defense but also on the evidence in ongoing diplomatic exchanges with foreign leaders. When this latter evidence is withheld from intelligence analysts, their best efforts are in effect sabotaged. This withholding does not serve the best interests of intelligence

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agencies, the National Security Council officers, or the country. Unfortunately it has been a common practice for the past four years during which I have served in the State Department.

As a postlude, let me add that the hastily called U.S. alert of forces on 24 October was presumably based in part, at least, on an intelligence estimate of Soviet intentions. In view of some of the unwarranted criticism of the government for its decision, I regret that you never advised your State Department intelligence arm that you had a problem nor asked us for an opinion on the evidence of Soviet intention to intervene with troops in the Mideast. Certainly the technical intelligence evidence available in INR did not support such a Soviet intention. I presume your alarm was based, again, on your exchanges with Moscow. If so, it would have been useful to you, in my opinion, to consult some experts in Soviet political strategy and some experts in evidence of Soviet military capabilities and intentions. Such experts are available in INR. You may have consulted them in Defense or CIA or elsewhere, but I respectfully submit that the Secretary of State should *always* consult his foreign policy intelligence staff on major politico-military crises, and that he should tell that staff—or, at least, its chief—what is going on diplomatically so as to add this vital ingredient to the pool of evidence. If there were shortcomings in the handling of intelligence in these two cases, and I think there were, they came from these things:

1. failure to pass on evidence contained in Soviet statements on the situation;
2. isolation of intelligence officers from thinking and key questions in the minds of policy officers; and,
3. policy officers acting as their own intelligence analysts when they have neither technical knowledge nor time to weigh all the evidence objectively.

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This catalogue of faulty procedures, written in the heat of the crisis, is self-explanatory and, I believe, still valid. Naturally, I was speaking on behalf of my own intelligence staff in the State Department, but I do not think that either CIA or Defense was properly brought into the picture prior to a

decision which theoretically, at least, might have precipitated a grave world military confrontation. No expert Soviet analyst was consulted outside of Kissinger's personal staff and no paper on options and possible consequences was prepared unless it was for Kissinger alone. In fact no formal National Intelligence Estimate on the Arab-Israeli situation was written after May 17, 1973. Such an estimate was not missed, evidently, and it was at this time that the Office of National Estimates, responsible for preparing National Intelligence Estimates, was abolished.

Changes in Procedure

I do not want to belabor this historical incident. It passed and the nation survived. What I am concerned about is that our decision-making procedures in the NSC structure and the dissemination of national intelligence data and judgments at that level be restored once again to the comparatively open and orderly style of previous administrations. Specifically, I would urge:

- 1. The NSC itself should meet regularly on important issues with the President presiding.*
- 2. Major NSC option papers should routinely be accompanied by National Intelligence Estimates laying the factual and analytical groundwork for decisions.*
- 3. Something closely equivalent to the 23-year-old Office of National Estimates should be re-established in the CIA to provide a scholarly, analytical center for State-Defense-CIA examination of all intelligence matters, with full independence to report objectively to the Director of Central Intelligence and to record dissenting views.*
- 4. The three principal chiefs of analytical and estimative intelligence units in State-Defense-CIA should be kept up-to-date with any evidence about adversary intentions which comes in Presidential and diplomatic correspondence with foreign governments so that knowledge can be reflected in intelligence estimates of probable developments.*

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5. *The Director of the CIA should have direct access to the President for presenting important views of the State-Defense-CIA Intelligence Community.*

6. *Decisions to suppress or prevent dissemination of strategic intelligence information should be solely the responsibility of the Director of Central Intelligence, and not any other official unless conflicts of judgment at Cabinet or NSC staff level require submission of a matter to the President himself.*

These simple changes of bureaucratic procedure would do much to restore the vigor, the morale, and the effectiveness of the agencies and staffs supporting the President in national security and foreign affairs. The decision-making machinery of our government at the top during the Nixon era became so constricted and narrow that it jeopardized the orderly workings of government. In the best of bureaucratic worlds the processes move systematically, so that information is organized in a way which leads to understanding, understanding leads to action, and action leads to responsible explanation of policies at all levels of interest and concern. Failure of the bureaucratic process at any of these stages leads to confusion and mistrust.

Kissinger knows this very well. He has made eloquent statements on the need to build a consensus in support of American foreign policy, a need which he is bound to feel intensely as he confronts the multiple challenges of the next two years. One man cannot think everything, do everything, and explain everything. It must be hoped that the President and the Secretary of State can build confidence and common understanding within and with the foreign policy and intelligence bureaucracy which they control, mainly by using it and engaging its skills in decision-making. Ways must be found to get our intelligence analysis system working at top efficiency and to disseminate more widely the light it sheds on foreign dangers and opportunities. It is hard to see how a lasting consensus in the Congress, the media, and the public can otherwise come about.

Appendix II. — "Vietnam Cover-Up: Playing War With Numbers"

(May 1975)

Harper's

Sam Adams

VIETNAM COVER-UP: PLAYING WAR WITH NUMBERS

A CIA conspiracy against its own intelligence

IN LATE 1965, WELL AFTER the United States had committed ground troops to Vietnam, the CIA assigned me to study the Vietcong. Despite the almost 200,000 American troops and the advanced state of warfare in South Vietnam, I was the first intelligence analyst in Washington to be given the full-time job of researching our South Vietnamese enemies. Incredible as it now seems, I remained the only analyst with this assignment until just before the Tet offensive of 1968.

At CIA headquarters in 1965 nobody was studying the enemy systematically, the principal effort being geared to a daily publication called the "Sitrep" (Vietnam Situation Report), which concerned itself with news about the activities of South Vietnamese politicians and the location of Vietcong units. The Sitrep analysts used the latest cables from Saigon, and tended to neglect information that didn't fit their objectives. The Johnson Administration was already wondering how long the Vietcong could stick it out, and since this seemed too complicated a question for the Sitrep to answer, the CIA's research department assigned it to me. I was told to find out the state of enemy morale.

Good news and bad news

I LOOKED UPON THE NEW JOB as something of a promotion. Although I had graduated from Harvard in 1955, I didn't join the Agency until 1963, and I had been fortunate in my first assignment as an analyst of the Congo rebellion. My daily and weekly reports earned the praise

of my superiors, and the Vietcong study was given to me by way of reward, encouraging me in my ambition to make a career within the CIA.

Without guidance and not knowing what else to do, I began to tinker with the VC defector statistics, trying to figure out such things as where the defectors came from, what jobs they had, and why they had wanted to quit. In short order I read through the collection of weekly reports, and so I asked for a ticket to Vietnam to see what other evidence was available over there. In mid-January 1966, I arrived in Saigon to take up a desk in the U.S. Embassy. After a couple of weeks, the CIA station chief (everyone called him "Jorgy") heard I was in the building adding and subtracting the number of defectors. He called me into his office. "Those statistics aren't worth a damn," he said. "No numbers in Vietnam are, and, besides, you'll never learn anything sitting around Saigon." He told me I ought to go to the field and start reading captured documents. I followed Jorgy's advice.

The captured documents suggested a phenomenon that seemed incredible to me. Not only were the VC taking extremely heavy casualties, but large numbers of them were deserting. I got together two sets of captured papers concerning desertion. The first set consisted of enemy unit rosters, which would say, for example, that in a certain seventy-seven-man outfit, only sixty men were "present for duty." Of the seventeen absent, two were down with malaria, two were at training school, and thirteen had deserted. The other documents were directives from various

Sam Adams is a fourth cousin, seven times removed, of President John Adams. His great-great-great-grandfather, also named John, lost an ear at the Battle of Bunker Hill. Mr. Adams raises cattle in Leesburg, Virginia, and is writing a book about his now-aborted CIA career.

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PLAYING
WAR WITH
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VC headquarters telling subordinates to do something about the growing desertion rate. "Christ Almighty," they all seemed to say. "These AWOLs are getting out of hand. Far too many of our boys are going over the hill."

I soon collected a respectable stack of rosters, some of them from large units, and I began to extrapolate. I set up an equation which went like this: if A, B, and C units (the ones for which I had documents) had so many deserters in such and such a period of time, then the number of deserters per year for the whole VC Army was X. No matter how I arranged the equation, X always turned out to be a very big number. I could never get it below 50,000. Once I even got it up to 100,000.

The significance of this finding in 1966 was immense. At that time our official estimate of the strength of the enemy was 270,000. We were killing, capturing, and wounding VC at a rate of almost 150,000 a year. If to these casualties you added 50,000 to 100,000 deserters—well, it was hard to see how a 270,000-man army could last more than a year or two longer.

I returned in May to tell everyone the good news. No one at CIA headquarters had paid much attention to VC deserters because captured documents were almost entirely neglected. The finding created a big stir. Adm. William F. Raborn, Jr., then director of the CIA, called me in to brief him and his deputies about the Vietcong's AWOL problem. Right after the briefing, I was told that the Agency's chief of research, R. Jack Smith, had called me "the outstanding analyst" in the research directorate.

But there were also skeptics, particularly among the CIA's old Vietnam hands, who had long since learned that good news was often illusory. To be on the safe side, the Agency formed what was called a "Vietcong morale team" and sent it to Saigon to see if the news was really true. The team consisted of myself, acting as a "consultant," and four Agency psychiatrists, who presumably understood things like morale.

THE PSYCHIATRISTS had no better idea than I'd had, when I started out, how to plumb the Vietcong mind. One of the psychiatrists said, "We'll never get Ho Chi Minh to lie still on a leather couch, so we better think up something else quick." They decided to ask the CIA men in the provinces what they thought about enemy morale. After a month or so of doing this, the psychiatrists went back to Washington convinced that, by and large, Vietcong spirits were in good shape. I went back with suitcases full of captured documents that supported my thesis about the Vietcong desertion rate.

But I was getting uneasy. I trusted the opinion of the CIA men in the field who had told

the psychiatrists of the Vietcong's resilience. The South Vietnamese government was in one of its periodic states of collapse, and somehow it seemed unlikely that the Vietcong would be falling apart at the same time. I began to suspect that something was wrong with my prediction that the VC were headed for imminent trouble. On reexamining the logic that had led me to the prediction, I saw that it was based on three main premises. Premise number one was that the Vietcong were suffering very heavy casualties. Although I'd heard all the stories about exaggerated reporting, I tended not to believe them, because the heavy losses were also reflected in the documents. Premise two was my finding that the enemy army had a high desertion rate. Again, I believed the documents. Premise three was that both the casualties and the deserters came out of an enemy force of 270,000. An old Vietnam hand, George Allen, had already told me that this number was suspect.

In July, I went to my supervisor and told him I thought there might be something radically wrong with our estimate of enemy strength, or, in military jargon, the order of battle. "Maybe the 270,000 number is too low," I said. "Can I take a closer look at it?" He said it was okay with him just so long as I handed in an occasional item for the Sitrep. This seemed fair enough, and so I began to put together a file of captured documents.

The documents in those days were arranged in "bulletins," and by mid-August I had collected more than 600 of them. Each bulletin contained several sheets of paper with summaries in English of the information in the papers taken by American military units. On the afternoon of August 19, 1966, a Friday, Bulletin 689 reached my desk on the CIA's fifth floor. It contained a report put out by the Vietcong headquarters in Binh Dinh province, to the effect that the guerrilla-militia in the province numbered just over 50,000. I looked for our own intelligence figures for Binh Dinh in the order of battle and found the number 4,500.

"My God," I thought, "that's not even a tenth of what the VC say."

In a state of nervous excitement, I began searching through my file of bulletins for other discrepancies. Almost the next document I looked at, the one for Phu Yen province, showed 11,000 guerrilla-militia. In the official order of battle we had listed 1,400, an eighth of the Vietcong estimate. I almost shouted from my desk. "There goes the whole damn order of battle!"

Unable to contain my excitement, I began walking around the office, telling anybody who would listen about the enormity of the oversight and the implications of it for our conduct of the war. That weekend I returned to the office, and on both Saturday and Sunday I

searched through the entire collection of 600-odd bulletins and found further proof of a gross underestimate of the strength of the enemy we had been fighting for almost two years. When I arrived in the office on Monday a colleague of mine brought me a document of a year earlier which he thought might interest me. It was from Vietcong headquarters in South Vietnam, and it showed that in early 1965 the VC had about 200,000 guerrilla-militia in the south, and that they were planning to build up to 300,000 by the end of the year. Once again, I checked the official order of battle. It listed a figure of exactly 103,573 guerrilla-militia—in other words, half as many as the Vietcong said they had in early 1965, and a third as many as they planned to have by 1966.*

* A document was later captured which showed the Vietcong not only reached but exceeded their quota. Dated April 1966, it put the number of guerrilla-militia at 330,000.

No official comment

THAT AFTERNOON, August 22, I wrote a memorandum suggesting that the overall order of battle estimate of 270,000 might be 200,000 men too low. Supporting it with references to numerous bulletins, I sent it up to the seventh floor, and then waited anxiously for the response. I imagined all kinds of sudden and dramatic telephone calls. "Mr. Adams, come brief the director." "The President's got to be told about this, and you'd better be able to defend those numbers." I wasn't sure what would happen, but I was sure it would be significant, because I knew this was the biggest intelligence find of the war—by far. It was important because the planners running the war in those days used statistics as a basis for everything they did, and the most important figure of all was the size of the enemy array—that order of

"If the Vietcong army suddenly doubled in size, our whole statistical system would collapse. We'd be fighting a war twice as big as the one we thought we were fighting."

None love the messenger who brings bad news.
—Sophocles, *Antigone*



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battle number, 270,000. All our other intelligence estimates were tied to the order of battle: how much rice the VC ate, how much ammunition they shot off, and so forth. If the Vietcong Army suddenly doubled in size, our whole statistical system would collapse. We'd be fighting a war twice as big as the one we thought we were fighting. We already had about 350,000 soldiers in Vietnam, and everyone was talking about "force ratios." Some experts maintained that in a guerrilla war our side had to outnumber the enemy by a ratio of 10 to 1; others said 5 to 1; the most optimistic said 3 to 1. But even if we used the 3 to 1 ratio, the addition of 200,000 men to the enemy order of battle meant that somebody had to find an extra 600,000 troops for our side. This would put President Johnson in a very tight fix—either quit the war or send more soldiers. Once he was informed of the actual enemy strength, it seemed inconceivable that he could continue with the existing force levels. I envisioned the President calling the director on the carpet, asking him why this information hadn't been found out before.

Nothing happened. No phone calls from anybody. On Wednesday I still thought there must have been some terrible mistake; on Thursday I thought the news might have been so important that people were still trying to decide what to do with it. Instead, on Friday, the memorandum dropped back in my in-box. There was no comment on it at all—no request for amplification, no question about my numbers, nothing, just a routine slip attached showing that the entire CIA hierarchy had read it.

I was aghast. Here I had come up with 200,000 additional enemy troops, and the CIA hadn't even bothered to ask me about it, let alone tell anybody else. I got rather angry and wrote a second memorandum, attaching even more references to other documents. Among these was a report from the Vietcong high command showing that the VC controlled not 3 million people (as in our official estimate) but 6 million (their estimate). I thought that this helped to explain the origins of the extra 200,000 guerrilla-militia, and also that it was an extraordinary piece of news in its own right. A memorandum from my office—the office of Current Intelligence—ordinarily would be read, edited, and distributed within a few days to the White House, the Pentagon, and the State Department. It's a routine procedure, but once again I found myself sitting around waiting for a response, getting angrier and angrier. After about a week I went up to the seventh floor to find out what had happened to my memo. I found it in a safe, in a manila folder marked "Indefinite Hold."

I went back down to the fifth floor, and wrote still another memo, referencing even more docu-

ments. This time I didn't send it up, as I had the others, through regular channels. Instead, I carried it upstairs with the intention of giving it to somebody who would comment on it. When I reached the office of the Asia-Africa area chief, Waldo Duberstein, he looked at me and said: "It's that Goddamn memo again. Adams, stop being such a prima donna." In the next office, an official said that the order of battle was General Westmoreland's concern, and we had no business intruding. This made me even angrier. "We're all in the same government," I said. "If there's a discrepancy this big, it doesn't matter who points it out. This is no joke. We're in a war with these guys." My remarks were dismissed as rhetorical, bombastic, and irrelevant.

On the ninth of September, eighteen days after I'd written the first memo, the CIA agreed to let a version of it out of the building, but with very strange restrictions. It was to be called a "draft working paper," meaning that it lacked official status; it was issued in only 25 copies, instead of the usual run of over 200; it could go to "working-level types" only—analysts and staff people—but not to anyone in a policy-making position—to no one, for example, on the National Security Council. One copy went to Saigon, care of Westmoreland's Order of Battle Section, carried by an official who worked in the Pentagon for the Defense Intelligence Agency.

BY THIS TIME I was so angry and exhausted that I decided to take two weeks off to simmer down. This was useless. I spent the whole vacation thinking about the order of battle. When I returned to the Agency, I found that it came out monthly and was divided into four parts, as follows:

Communist regulars	About 110,000 (it varied by month)
Guerrilla-militia	Exactly 103,573
Service troops	Exactly 18,553
Political cadres	Exactly 32,175
	That is, 271,301, or about 270,000

The only category that ever changed was "Communist regulars" (uniformed soldiers in the Vietcong Army). In the last two years, this figure had more than doubled. The numbers for the other three categories had remained precisely the same, even to the last digit. There was only one conclusion: no one had even looked at them! I decided to do so right away, and to find out where the numbers came from and whom they were describing.

I began by collecting more documents on

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the guerrilla-militia. These were "the soldiers in black pajamas" the press kept talking about; lightly armed in some areas, armed to the teeth in others, they planted most of the VC's mines and booby traps. This was important, I discovered, because in the Da Nang area, for example, mines and booby traps caused about two-thirds of all the casualties suffered by U.S. Marines.

I also found where the number 103,573 came from. The South Vietnamese had thought it up in 1964; American Intelligence had accepted it without question, and hadn't checked it since. "Can you believe it?" I said to a fellow analyst. "Here we are in the middle of a guerrilla war, and we haven't even bothered to count the number of guerrillas."

The service troops were harder to locate. The order of battle made it clear that these VC soldiers were comparable to specialists in the American Army—ordnance sergeants, quartermasters, medics, engineers, and so forth. But despite repeated phone calls to the Pentagon, to U.S. Army headquarters, and to the office of the Joint Chiefs of Staff, I couldn't find anyone who knew where or when we'd hit upon the number 18,553. Again I began collecting VC documents, and within a week or so had come to the astonishing conclusion that our official estimate for service troops was at least two years old and five times too low—it should not have been 18,553, but more like 100,000. In the process I discovered a whole new category of soldiers known as "assault youths" who weren't in the order of battle at all.

I also drew a blank at the Pentagon regarding political cadres, so I started asking CIA analysts who these cadres might be. One analyst said they belonged to something called the "infrastructure," but he wasn't quite sure what it was. Finally, George Allen, who seemed to know more about the VC than anyone else, said the "infrastructure" included Communist party members and armed police and people like that, and that there was a study around which showed how the 39,175 number had been arrived at. I eventually found a copy on a shelf in the CIA archives. Unopened, it had never been looked at before. The study had been published in Saigon in 1965, and one glance showed it was full of holes. Among other things, it left out all the VC cadres serving in the countryside—where most of them were.

By December 1966 I had concluded that the number of Vietcong in South Vietnam, instead of being 270,000, was more like 600,000, or over twice the official estimate.* The higher number made many things about the Vietnam war fall into place. It explained, for instance,

how the Vietcong Army could have so many deserters and casualties and still remain effective.

Nobody listens

MIND YOU, DURING ALL THIS TIME I didn't keep this information secret—just the opposite. I not only told everyone in the Agency who'd listen, I also wrote a continuous sequence of memorandums, none of which provoked the least response. I'd write a memo, document it with footnotes, and send it up to the seventh floor. A week would pass, and then the paper would return to my in-box: no comment, only the same old buck slip showing that everyone upstairs had read it.

By this time I was so angry and so discouraged with the research directorate that I began looking for another job within the CIA, preferably in a section that had some use for real numbers. I still believed that all this indifference to unwelcome information afflicted only part of the bureaucracy, that it was not something characteristic of the entire Agency. Through George Allen I met George Carver, a man on the staff of Richard Helms, the new CIA director, who had the title "special assistant for Vietnamese affairs." Carver told me that I was "on the right track" with the numbers, and he seemed an independent-minded man who could circumvent the bureaucratic timidity of the research directorate. At the time I had great hopes of Carver because, partly as a result of his efforts, word of my memorandums had reached the White House. Cables were passing back and forth between Saigon and Washington, and it had become fairly common knowledge that something was very wrong with the enemy strength estimates.

In mid-January 1967, Gen. Earle Wheeler, chairman of the Joint Chiefs of Staff, called for an order-of-battle conference to be held in Honolulu. The idea was to assemble all the analysts from the military, the CIA, and the Defense Intelligence Agency in the hope that they might reach a consensus on the numbers. I went to Honolulu as part of the CIA delegation. I didn't trust the military and, frankly, I expected them to pull a fast one and lie about the numbers. What happened instead was that the head of Westmoreland's Order of Battle Section, Col. Gains B. Hawkins, got up right at the beginning of the conference and said, "You know, there's a lot more of these little bastards out there than we thought there were." He and his analysts then raised the estimate of enemy strength in each category of the order of battle; instead of the 103,573 guerrilla-militia, for example, they'd come up with 108,000. Hawkins's remarks were unofficial, but nevertheless, I figured, "the fight's over. They're reading the same documents that

* This was broken down as follows: Communist regulars, about 100,000; guerrilla-militia, about 300,000; service troops, about 100,000; political cadres, about 100,000.

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I am, and everybody's beginning to use real numbers."

I couldn't have been more wrong.

After a study trip to Vietnam, I returned to Washington in May 1967, to find a new CIA report to Secretary of Defense Robert McNamara called something like "Whither Vietnam?" Its section on the Vietcong Army listed all the discredited official figures, adding up to 270,000. Dumbfounded, I rushed into George Carver's office and got permission to correct the numbers. Instead of my own total of 600,000, I used 500,000, which was more in line with what Colonel Hawkins had said in Honolulu. Even so, one of the chief deputies of the research directorate, Drexel Godfrey, called me up to say that the directorate couldn't use 500,000 because "it wasn't official." I said: "That's the silliest thing I've ever heard. We're going to use real numbers for a change." Much to my satisfaction and relief, George Carver supported my figures. For the first time in the history of the Vietnam war a CIA paper challenging the previous estimates went directly to McNamara. Once again I said to myself: "The battle's won; virtue triumphs." Once again, I was wrong.

SOON AFTER, I attended the annual meeting of the Board of National Estimates on Vietnam. Held in a windowless room on the CIA's seventh floor, a room furnished with leather chairs, blackboards, maps, and a large conference table, the meeting comprised the whole of the intelligence community, about forty people representing the CIA, the Defense Intelligence Agency, the Army, the Navy, the Air Force, and the State Department. Ordinarily the meeting lasted about a week, its purpose being to come to a community-wide agreement about the progress of the war. This particular consensus required the better part of six months.

The procedure of these estimates requires the CIA to submit the first draft, and then everyone else argues his group's position. If one of the services violently disagrees, it is allowed to take exception in a footnote to the report. The CIA's first draft used the same 500,000 number that had gone to McNamara in May. None of us expected what followed.

George Fowler from DIA, the same man who'd carried my guerrilla memo to Saigon in September 1966, got up and explained he was speaking for the entire military. "Gentlemen, we cannot agree to this estimate as currently written. What we object to are the numbers. We feel we should continue with the official order of battle." I almost fell off my chair. The official OB figure at that time, June 1967, was still 270,000, with all the old components, including 103,573 guerrilla militia.

In disbelief I hurried downstairs to tell my

boss, George Carver, of the deception. He was reassuring. "Now, Sam," he said, "don't you worry. It's time to bite the bullet. You go on back up there and do the best you can." For the next two-and-a-half months, armed with stacks of documents, I argued with the military over the numbers. By the end of August, they no longer insisted on the official order of battle figures, but would not raise them above 300,000. The CIA numbers remained at about 500,000. The meetings recessed for a few weeks at the end of the month, and I left Washington with my wife, Eleanor, to visit her parents in Alabama. No sooner had we arrived at their house when the phone rang. It was George Carver. "Sam, come back up. We're going to Saigon to thrash out the numbers."

I was a little cynical. "We won't sell out, will we?"

"No, no, we're going to bite the bullet," he said.

Army estimate

WE WENT TO SAIGON in early September to yet another order-of-battle meeting, this one convened in the austere conference room in Westmoreland's headquarters. Among the officers supporting Westmoreland were Gen. Philip Davidson, head of intelligence (the military calls it G-2); General Siddle, head of press relations ("What the dickens is he doing at an OB conference?" I thought); Colonel Morris, one of Davidson's aides; Col. Danny Graham, head of the G-2 Estimates Staff; and, of course, Col. Gains B. Hawkins, chief of the G-2 Order of Battle Section. There were also numerous lieutenant colonels, majors, and captains, all equipped with maps, charts, files, and pointers.

The military dominated the first day of the conference. A major gave a lecture on the VC's low morale. I kept my mouth shut on the subject, even though I knew their documents showed a dwindling VC desertion rate. Another officer gave a talk full of complicated statistics which proved the Vietcong were running out of men. It was based on something called the cross-over memo which had been put together by Colonel Graham's staff. On the second day we got down to business—the numbers.

It was suspicious from the start. Every time I'd argue one category up, the military would drop another category down by the same amount. Then there was the little piece of paper put on everybody's desk saying that the military would agree to count more of one type of VC if we'd agree to eliminate another type of VC. Finally, there was the argument over a subcategory called the district-level service troops.

I stood up to present the CIA's case. I said

that I had estimated that there were about seventy-five service soldiers in each of the VC's districts, explaining that I had averaged the numbers in a sample of twenty-eight documents. I briefly reviewed the evidence and asked whether there were any questions.

"I have a question," said General Davidson. "You mean to tell me that you only have twenty-eight documents?"

"Yes sir," I said. "That's all I could find."

"Well, I've been in the intelligence business for many years, and if you're trying to sell me a number on the basis of that small a sample, you might as well pack up and go home." As I resumed my seat, Davidson's aide, Colonel Morris, turned around and said, "Adams, you're full of shit."

A lieutenant colonel then got up to present the military's side of the case. He had counted about twenty service soldiers per district, he said, and then he went on to describe how a district was organized. When he asked for questions, I said, "How many documents are in your sample?"

He looked as if somebody had kicked him in the stomach. Instead of answering the question, he repeated his description of how the VC organized a district.

Then George Carver interrupted him. "Come, come, Colonel," he said. "You're not answering the question. General Davidson has just taken Mr. Adams to task for having only twenty-eight documents in his sample. It's a perfectly legitimate question. How many have you in yours?"

In a very low voice, the lieutenant colonel said, "One." I looked over at General Davidson and Colonel Morris to see whether they'd denounce the lieutenant colonel for having such a small sample. Both of them were looking at the ceiling.

"Colonel," I continued, "may I see your document?" He didn't have it, he said, and, besides, it wasn't a document, it was a POW report.

Well, I asked, could he please try and remember who the twenty service soldiers were? He ticked them off. I kept count. The total was forty.

"Colonel," I said, "you have forty soldiers here, not twenty. How did you get from forty to twenty?"

"We scaled down the evidence," he replied.

"Scaled down the evidence?"

"Yes," he said. "We cut out the hangers-on."

"And how do you determine what a hanger-on is?"

"Civilians, for example."

Now, I knew that civilians sometimes worked alongside VC service troops, but normally the rosters listed them separately. So I waited until the next coffee break to ask Colonel Hawkins how he'd "scale down" the service troops in a

document I had. It concerned Long Dat District in the southern half of South Vietnam, and its 111 service troops were broken down by components. We went over each one. Of the twenty in the medical component, Hawkins would count three, of the twelve in the ordnance section, he'd count two, and so forth, until Long Dat's 111 service soldiers were down to just over forty. There was no indication in the document that any of those dropped were civilians.

As we were driving back from the conference that day, an Army officer in the car with us explained what the real trouble was: "You know, our basic problem is that we've been told to keep our numbers under 300,000."

LATER, AFTER RETIRING from the Army, Colonel Hawkins confirmed that this was basically the case. At the start of the conference, he'd been told to stay below a certain number. He could no longer remember what it was, but he recalled that the person who gave it to him was Colonel Morris, the officer who had told me I was "full of shit."

The Saigon conference was in its third day, when we received a cable from Helms that, for all its euphemisms, gave us no choice but to accept the military's numbers. We did so, and the conference concluded that the size of the Vietcong force in South Vietnam was 299,000. We accomplished this by simply marching certain categories of Vietcong out of the order of battle, and by using the military's "scaled-down" numbers.

I left the conference extremely angry. Another member of the CIA contingent, William Hyland (now head of intelligence at the Department of State), tried to explain. "Sam, don't take it so hard. You know what the political climate is. If you think they'd accept the higher numbers, you're living in a dream world." Shortly after the conference ended, another category was frog-marched out of the estimate, which dropped from 299,000 to 248,000.

I returned to Washington, and in October I went once again in front of the Board of National Estimates, by this time reduced to only its CIA members. I told them exactly what had happened at the conference—how the numbers had been scaled down, which types of Vietcong had left the order of battle, and even about the affair of Long Dat District. They were sympathetic.

"Sam, it makes my blood boil to see the military cooking the books," one of the board members said. Another asked, "Sam, have we gone beyond the bounds of reasonable dishonesty?" And I said, "Sir, we went past them last August." Nonetheless, the board sent the estimate forward for the director's signature, with the numbers unchanged. I was told there was

"Here we are in the middle of a guerrilla war," I said, "and we haven't even bothered to count the number of guerrillas."

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no other choice because Helms had committed the CIA to the military's numbers.

"But that's crazy," I said. "The numbers were faked." I made one last try. My memorandum was nine pages long. The first eight pages told how the numbers had got that way. The ninth page accused the military of lying. If we accepted their numbers, I argued, we would not only be dishonest and cowardly, we would be stupid. I handed the memo to George Carver to give to the director, and sent copies to everyone I could think of in the research branch. Although I was the only CIA analyst working on the subject at the time, nobody replied. Two days later Helms signed the estimate, along with its doctored numbers.

That was that. I went into Carver's office and quit Helms's staff. He looked embarrassed when I told him why I was doing so, but he said there was nothing he could do. I thanked him for all he had done in the earlier part of the year and for his attempt at trying to deal with real rather than imaginary numbers. I thought of leaving the CIA, but I still retained some faith in the Agency, and I knew that I was the only person in the government arguing for higher numbers with accurate evidence. I told Carver that the research directorate had formed a VC branch, in which, I said, I hoped to find somebody who would listen to me.

Facing facts

IN NOVEMBER General Westmoreland returned to Washington and held a press conference. "The enemy is running out of men," he said. He based this on the fabricated numbers, and on Colonel Graham's crossover memo. In early December, the CIA sent McNamara another "Whither Vietnam?" memo. It had the doctored numbers, but this time I was forbidden to change them. It was the same story with Helms's New Year briefing to Congress. Wrong numbers, no changes allowed. When I heard that Colonel Hawkins, whom I still liked and admired, had been reassigned to Fort Holabird in Baltimore, I went to see him to find out what he really thought about the order of battle. "Those were the worst three months in my life," he said, referring to July, August, and September, and he offered to do anything he could to help. When he had been asked to lower the estimates, he said, he had retained as many of the front-line VC troops as possible. For several hours we went over the order of battle. We had few disagreements, but I began to see for the first time that the Communist regulars, the only category I'd never looked at, were also seriously understated—perhaps by as many as 50,000 men. No one was interested, because adding 50,000 troops would have forced a reopening of

the issue of numbers, which everyone thought was settled. On January 29, 1968, I began the laborious job of transferring my files from Carver's office to the newly formed Vietcong branch.

The next day the VC launched the Tet offensive. Carver's office was chaos. There were so many separate attacks that someone was assigned full time to stick red pins in the map of South Vietnam just to keep track of them. Within a week's time it was clear that the scale of the Tet offensive was the biggest surprise to American intelligence since Pearl Harbor. As I read the cables coming in, I experienced both anger and a sort of grim satisfaction. There was just no way they could have pulled it off with only 248,000 men, and the cables were beginning to show which units had taken part. Many had never been in the order of battle at all; others had been taken out or scaled down. I made a collection of these units, which I showed Carver. Two weeks later, the CIA agreed to re-open the order-of-battle controversy.

SUDDENLY I WAS ASKED to revise and extend the memorandums that I had been attempting to submit for the past eighteen months. People began to congratulate me, to slap me on the back and say what a fine intelligence analyst I was. The Agency's chief of research, R. Jack Smith, who had once called me "the outstanding analyst" in the CIA but who had ignored all my reporting on the Vietcong, came down from the seventh floor to shake my hand. "We're glad to have you back," he said. "You know more about Vietnam than you did about the Congo." All of this disgusted me, and I accepted the compliments without comment. What was the purpose of intelligence, I thought, if not to warn people, to tell them what to expect? As many as 10,000 American soldiers had been killed in the Tet offensive because the generals had played politics with the numbers, and here I was being congratulated by the people who had agreed to the fiction.

In February the Agency accepted my analysis, and in April another order-of-battle conference was convened at CIA headquarters. Westmoreland's delegation, headed by Colonel Graham (now a lieutenant general and head of the Defense Intelligence Agency) continued to argue for the lower numbers. But from that point forward the White House stopped using the military estimate and relied on the CIA estimate of 600,000 Vietcong.

All along I had wondered whether the White House had had anything to do with fixing the estimates. The military wanted to keep them low in order to display the "light at the end of the tunnel," but it had long since occurred to me that maybe the generals were under pres-

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sure from the politicians. Carver had told me a number of times that he had mentioned my OB figures to Walt Rostow of the White House. But even now I don't know whether Rostow ordered the falsification, or whether he was merely reluctant to face unpleasant facts. Accepting the higher numbers forced the same old decision: pack up or send a lot more troops.

On the evening of March 31, the question of the White House role became, in a way, irrelevant. President Johnson made his announcement that he wasn't going to run again. Whoever the next President was, I felt, needed to be told about the sorry state of American intelligence so that he could do something about it. The next morning, April 1, I went to the CIA inspector general's office and said: "Gentlemen, I've come here to file a complaint, and it involves both the research department and the director. I want to make sure that the next administration finds out what's gone on down here." On May 28 I filed formal charges and asked that they be sent to "appropriate members of the White House staff" and to the President's Foreign Intelligence Advisory Board. I also requested an investigation by the CIA inspector general. Helms responded by telling the inspector general to start an investigation. This took two months. The director then appointed a high-level review board to go over the inspector general's report. The review board was on its way to taking another two months when I went to the general counsel's office and talked to a Mr. Ueberhorst. I said, "Mr. Ueberhorst, I wrote a report for the White House about three months ago complaining about the CIA management, and I've been getting the runaround ever since. What I want is some legal advice. Would I be breaking any laws if I took my memo and carried it over to the White House myself?" A few days later, on September 20, 1968, the executive director of the CIA, the number-three man in the hierarchy, called me to his office: "Mr. Adams, we think well of you, but Mr. Helms says he doesn't want your memo to leave the building." I took notes of the conversation, so my reproduction of it is almost verbatim. "This is not a legal problem but a practical one of your future within the CIA," I was told. "Because if you take that memo to the White House, it will be at your own peril, and even if you get what you want by doing so, your usefulness to the Agency will thereafter be nil." The executive director carried on this conversation for thirty-five minutes. I copied it all out until he said, "Do you have anything to say, Mr. Adams?" "Yes, sir," I said, "I think I'll take this right on over to the White House, and please tell the director of my intention." I wrote a memorandum of the conversation and sent it back up to the executive director's office with a covering letter saying, "I hope I'm quot-

ing you correctly; please tell me if I'm not."

A short while later he called me back to his office and said, "I'm afraid there's been a misunderstanding, because the last thing in the world the director wanted to do was threaten. He has decided that this thing can go forward."

I waited until after the Presidential election. Nixon won, and the next day I called the seventh floor to ask if it was now okay to send on my memo to the White House. On November 8, 1968, Mr. Helms summoned me to his office. The first thing he said to me was "Don't take notes." To the best of my recollection, the conversation then proceeded along the following lines. He asked what was bothering me; did I think my supervisors were treating me unfairly, or weren't they promoting me fast enough? No, I said. My problem was that he raved in on the numbers right before Tet. I enlarged on the theme for about ten minutes. He listened without expression, and when I was done he asked what I would have had him do—take on the whole military? I said, that under the circumstances, that was the only thing he could have done; the military's numbers were faked. He then told me that I didn't know what things were like, that we could have told the White House that there were a million more Vietcong out there, and it wouldn't have made the slightest bit of difference in our policy. I said that we weren't the ones to decide about policy; all we should do was to send up the right numbers and let them worry. He asked me who I wanted to see, and I said that I had requested appropriate members of the White House staff and the President's Foreign Intelligence Advisory Board in my memo, but, frankly, I didn't know who the appropriate members were. He asked whether Gen. Maxwell Taylor and Walt Rostow would be all right. I told him that was not only acceptable, it was generous, and he said he would arrange the appointments for me.

With that I was sent around to see the deputy directors. The chief of research, R. Jack Smith, asked me what the matter was, and I told him the same things I had told Helms. The Vietnam war, he said, was an extraordinarily complex affair, and the size of the enemy army was only—his exact words—"a small but significant byway of the problem." His deputy, Edward Procter, now the CIA's chief of research, remarked, "Mr. Adams, the real problem is you. You ought to look into yourself."

Permission denied

AFTER MAKING THESE ROUNDS, I wrote letters to Rostow and Taylor, telling them who I was and asking that they include a member of Nixon's staff in any talks we had about the CIA's shortcomings. I forwarded the letters,

Sam Adams
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through channels, to the director's office, asking his permission to send them on. Permission was denied, and that was the last I ever heard about meeting with Mr. Rostow and General Taylor.

In early December I did manage to see the executive secretary of the President's Foreign Intelligence Advisory Board, J. Patrick Coyne. He told me that a few days earlier Helms had sent over my memo, that some members of PFIAB had read it, and that they were asking me to enlarge on my views and to make any recommendations I thought were in order. Coyne encouraged me to write a full report, and in the following weeks I put together a thirty-five-page paper explaining why I had brought charges. A few days after Nixon's inauguration, in January 1969, I sent the paper to Helms's office with a request for permission to send it to the White House. Permission was denied in a letter from the deputy director, Adm. Rufus Taylor, who informed me that the CIA was a team, and that if I didn't want to accept the team's decision, then I should resign.

There I was—with nobody from Nixon's staff having heard of any of this. It was far from clear whether Nixon intended to retain the President's Foreign Intelligence Advisory Board. J. Patrick Coyne said he didn't know. He also said he didn't intend to press for the release of the thirty-five-page report. I thought I had been had.

For the first time in my career, I decided to leave official channels. This had never occurred to me before, not even when Helms had authorized the doctored numbers in the month before Tet. I had met a man named John Court, a member of the incoming staff of the National Security Council, and through him I hoped for a measure of redress. I gave him my memorandum and explained its import—including Westmoreland's deceptions before Tet—and asked him to pass it around so that at least the new administration might know what had gone on at the CIA and could take any action it thought necessary. Three weeks later Court told me that the memo had gotten around, all right, but the decision had been made not to do anything about it.

So I gave up. If the White House wasn't interested, there didn't seem to be any other place I could go. I felt I'd done as much as I possibly could do, and that was that.

ONCE AGAIN I THOUGHT about quitting the Agency. But again I decided not to, even though my career was pretty much in ruins. Not only had the deputy director just suggested that I resign, but I was now working under all kinds of new restrictions. I was no longer permitted to go to Vietnam. After the order-of-battle conference in Saigon in September 1967, Westmore-

land's headquarters had informed the CIA station chief that I was persona non grata, and that they didn't want me on any military installations throughout the country. In CIA headquarters I was more or less confined to quarters, since I was no longer asked to attend any meetings at which outsiders were present. I was even told to cut back on the lectures I was giving about the VC to CIA case officers bound for Vietnam.*

I suppose what kept me from quitting this time was that I loved the job. The numbers business was going along fairly well, or so I thought, and I was becoming increasingly fascinated with what struck me as another disturbing question. Why was it that the Vietcong always seemed to know what we were up to, while we could never find out about them except through captured documents? At the time of the Tet offensive, for example, the CIA had only a single agent in the enemy's midst, and he was low-level.

At about this time, Robert Klein joined the VC branch. He had just graduated from college, and I thought him one of the brightest and most delightful people I had ever met. We began battling back and forth the question of why the VC always knew what was going to happen next. Having written a study on the Vietcong secret police in 1967, I already knew that the Communists had a fairly large and sophisticated espionage system. But I had no idea *how* large, and, besides, there were several other enemy organizations in addition to the secret police that had infiltrated the Saigon government. Klein and I began to sort them out. The biggest one, we found, was called the Military Proselytizing Directorate, which concentrated on recruiting agents in the South Vietnamese Army and National Police. By May 1969 we felt things were beginning to fall into place, but we still hadn't answered the fundamental question of how many agents the VC had in the South Vietnamese government. I decided to do the obvious thing, which was to start looking in the captured documents for references to spies. Klein and I each got a big stack of documents, and we began going through them, one by one. Within two weeks we had references to more than 1,000 VC agents. "Jesus Christ!" I said to Klein. "A thousand agents! And before Tet the CIA only had one." Furthermore, it was clear from the documents that the thousand we'd found were only the top of a very big iceberg.

Right away I went off to tell everybody the bad news. I had begun to take a perverse plea-

* In mid-1968 I had discovered that Agency officers sent to Vietnam received a total of only one hour's instruction on the organization and methods of operation of the Vietcong. Disturbed that they should be sent up against so formidable a foe with so little training, I had by the end of the year increased the hours from one to twenty-four. I gave most of the lectures myself.

sure in my role as the man in opposition at the Agency. The first person I spoke to was the head of the Vietnam branch of the CIA Clandestine Services. I said, "Hey, a guy called Klein and I just turned up references to over 1,000 VC agents, and from the looks of the documents the overall number might run into the tens of thousands." He said, "For God's sake, don't open that Pandora's box. We have enough troubles as it is."

The next place I tried to reach was the Board of National Estimates, which was just convening its annual meeting on the Vietnam draft. Because of the trouble I'd made the year before, and because the meeting included outsiders, I wasn't allowed to attend. By now, Klein and I had come to the very tentative conclusion, based mostly on extrapolations from documents, that the Military Proselytizing Directorate alone had 20,000 agents in the South Vietnamese Army and government. This made it by far the biggest agent network in the history of espionage, and I was curious to know whether this was known in Saigon. I prompted a friend of mine to ask the CIA's Saigon station chief—back in Washington to give another briefing I wasn't allowed to attend—just how many Vietcong agents there were in the South Vietnamese Army. The station chief (a new one; Jorgy had long since moved) was taken aback at the question. He'd never considered it before. He said, "Well, the South Vietnamese Military Security Service has about 300 suspects under consideration. I think that about covers it." If Klein and I were anywhere near right with our estimate of 20,000, that made the station chief's figure too low by at least 6,000 percent.

New discoveries

DECIDING THAT WE DIDN'T yet know enough to make an issue of the matter, Klein and I went back to plugging the documents. The more we read, the wilder the story became. With a great deal of help from the CIA counterintelligence staff, we eventually found that Vietcong agents were running the government's National Police in the northern part of the country, that for many years the VC had controlled the counterintelligence branch of the South Vietnamese Military Security Service (which may explain

why the station chief's estimate was so low), and that in several areas of Vietnam, the VC were in charge of our own Phoenix Program. Scarcely a day passed without a new discovery. The most dramatic of them concerned a Vietcong agent posing as a South Vietnamese ordnance sergeant in Da Nang. The document said that the agent had been responsible for setting off explosions at the American air base in April 1969, and destroying 10,000 tons of ammunition worth \$100 million. The explosions were so big that they attracted a Congressional investigation, but the military managed to pass them off as having been started accidentally by a grass fire.

The problem with all these reports was not that they were hidden, but that they'd never been gathered and analyzed before in a systematic manner. Although CIA men in the field were aware of VC agents, Washington had failed to study the extent of the Vietcong network.

This is exactly what Klein and I attempted in the fall of 1969. By this time we had concluded that the total number of VC agents in the South Vietnamese Army and government was in the neighborhood of 30,000. While we admitted that the agents were a mixed bag—most of them were low-level personnel hedging their bets—we nonetheless arrived at an extremely bleak overall conclusion. That was that the agents were so numerous, so easy to recruit, and so hard to catch that their existence "called into question the basic loyalty of the South Vietnamese government and armed forces." This, in turn, brought up questions about the ultimate chances for success of our new policy of turning the war over to the Vietnamese.

In late November Klein and I had just about finished the first draft of our study when we were told that *under no circumstances* was it to leave CIA headquarters, and that, specifically, it shouldn't go to John Court of the White House staff. Meanwhile, however, I had called Court a number of times, telling him that the study existed, and that it suggested that Vietnamization probably wouldn't work. For the next two-and-a-half months, Court called the CIA front office asking for a draft of our memo on agents. Each time he was turned down.

Finally, in mid-February 1970, Court came over to the VC branch, and asked if he could have a copy of the agent memorandum. I told him

"You know," said an Army officer, "our basic problem is that we've been told to keep our numbers under 300,000."

THE MORAL OF THE TALE

Readers interested in the question of integrity in American government might take note of three successful bureaucrats mentioned in this chronicle. All of them acknowledged or abetted the counterfeiting of military intelligence, and all of them have risen to high places within their respective apparatus. Lt. Gen. Daniel Graham, who helped to lower the U.S. Army's estimate of the Vietcong

strength, is now the head of the Defense Intelligence Agency; Edward Procter, who steadfastly ignored accurate intelligence, is now chief of the CIA research directorate; and William Hyland, who conceded the impossibility of contesting a political fiction, is now the head of State Department Intelligence. Their collective docility might also interest readers concerned with questions of national security.

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he couldn't, but that I supposed it was okay if he looked at it at a nearby desk. By closing time Court had disappeared, along with the memo. I phoned him the next morning at the Executive Office Building and asked him if he had it. "Yes, I took it. Is that okay?" he said. It wasn't okay, and shortly after informing my superiors I received a letter of reprimand for releasing the memo to an "outsider." (Court, who worked for the White House, was the "outsider.") All copies of the study within the CIA—several were around being reviewed—were recalled to the Vietcong branch and put in a safe. Klein was removed from working on agents, and told that if he didn't "shape up," he'd be fired.

THE RESEARCH DEPARTMENT and perhaps even Helms (I don't know) apparently were appalled by the agent memo's reaching the White House. It was embarrassing for the CIA, since we'd never let anything like that out before. To suddenly say, oh, by the way, our ally, the South Vietnamese government, is crawling with spies, might lead someone to think that maybe the Agency should have noticed them sooner. We'd been in the war, after all, for almost six years.

Court later wrote a précis of the memo and gave it to Kissinger. Kissinger gave it to Nixon. Shortly thereafter, the White House sent a directive to Helms which said, in effect: "Okay, Helms, get that damn agent paper out of the safe drawer." Some months later, the Agency coughed it up, almost intact.

Meanwhile, Klein quit. I tried to talk him out of it, but he decided to go to graduate school. He did so in September 1970, but not before leaving a letter of resignation with the CIA inspector general. Klein's letter told the complete story of the agent study, concluding with his opinion that the White House would never have learned about the Communist spies had it not been for John Court's sticky fingers.

By now my fortunes had sunk to a low ebb. For the first time in seven years, I was given an unfavorable fitness report. I was rated "marginal" at conducting research; I had lost my "balance and objectivity" on the war, and, worst of all, I was the cause of the "discontent leading to the recent resignation" of Klein. For these shortcomings I was being reassigned to a position where I would be "less directly involved in research on the war." This meant I had to leave the Vietcong branch and join a small historical staff, where I was to take up the relatively innocuous job of writing a history of the Cambodian rebels.

Once again, I considered resigning from the CIA, but the job still had me hooked, and ever since the coup that deposed Sihanouk in March 1970 I had been wondering what was going

on in Cambodia. Within a few weeks of that coup, the Communist army had begun to disappear from the southern half of South Vietnam for service next door, and I was curious to find out what it was up to. When I reported to the historical staff, I began, as usual, to collect documents. This was my main occupation for almost the next five months. I knew so little about Cambodia that I was fairly indiscriminate, and therefore grabbed just about everything I could find. By late April 1971, I had gathered several thousand reports, and had divided them into broad categories, such as "military" and "political." In early May, I began to go through the "military" reports.

One of the first of these was an interrogation report of a Vietcong staff officer who had surrendered in Cambodia in late 1970. The staff officer said he belonged to a Cambodian Communist regional command with a code name I'd never heard of: C-40. Apparently C-40 had several units attached to it, including regiments, and I'd never heard of any of these, either. And, it seemed, the units were mostly composed of Khmers, of whom C-40 had a total of 18,000. Now that appeared to me to be an awful lot of Khmer soldiers just for one area, so I decided to check it against our Cambodian order of battle. Within a month I made a startling discovery: there was no order of battle. All I could find was a little sheet of paper estimating the size of the Khmer Communist Army at 5,000 to 10,000 men. This sheet of paper, with exactly the same numbers, had been kicking around since early 1970.

It was the same story as our Vietcong estimate of 1966, only worse. In Vietnam we had neglected to look at three of the four parts of the Vietcong Army; in Cambodia we hadn't looked at the Khmer Communist Army at all. It later turned out that the 5,000-to-10,000 figure was based on numbers put together by a sergeant in the Royal Cambodian Army in 1969.

From then on, it was easy. Right in the same room with me was every single intelligence report on the Khmer rebels that had ever come in. Straightaway I found what the VC Army had been doing in Cambodia since Sihanouk's fall: it had put together the largest and best advisory structure in the Indochina war. Within two weeks I had discovered thirteen regiments, several dozen battalions, and a great many companies and platoons. Using exactly the same methods that I'd used on the Vietcong estimate before Tet (only now the methods were more refined), I came to the conclusion that the size of the Cambodian Communist Army was not 5,000 to 10,000 but, more like 100,000 to 150,000. In other words, the U.S. government's official estimate was between ten and thirty times too low.

My memo was ready in early June, and this

time I gave a copy to John Court of the White House the day before I turned it in at the Agency. This proved to have been a wise move, because when I turned it in I was told, "Under no circumstances does this go out of the room." It was the best order-of-battle paper I'd ever done. It had about 120 footnotes, referencing about twice that many intelligence reports, and it was solid as a rock.

A week later, I was taken off the Khmer Communist Army and forbidden to work on numbers anymore. A junior analyst began reworking my memo with instructions to hold the figure below 30,000. The analyst puzzled over this for several months, and at last settled on the same method the military had used in lowering the Vietcong estimate before Tet. He marched two whole categories out of the order of battle and "sealed down" what was left. In November 1971, he wrote up a memo placing the size of the Khmer Communist Army at 15,000 to 30,000 men. The CIA published the memo, and that number became the U.S. government's official estimate.

More distortions

THE PRESENT OFFICIAL ESTIMATE of the Khmer rebels—65,000—derives from the earlier one. It is just as absurd. Until very recently the Royal Cambodian Army was estimated at over 200,000 men. We are therefore asked to believe that the insurgents, who control four-fifths of Cambodia's land and most of its people, are outnumbered by the ratio of 3 to 1. In fact, if we count all the rebel soldiers, including those dropped or omitted from the official estimate, the Khmer Rebel Army is probably larger than the government's—perhaps by a considerable margin.

The trouble with this kind of underestimate is not simply a miscalculation of numbers. It also distorts the meaning of the war. In Cambodia, as in the rest of Southeast Asia, the struggle is for allegiance, and the severest test of loyalty has to do with who can persuade the largest number of peasants to pick up a gun. When American intelligence downgrades the strength of the enemy army, it ignores the Communist success at organizing and recruiting people. This is why the Communists call the struggle a "people's war" and why the government found it difficult to understand.

I spent the rest of 1971 and a large part of 1972 trying to get the CIA to raise the Cambodian estimate. It was useless. The Agency was busy with other matters, and I became increasingly discouraged. The Cambodian affair seemed to me to be a repeat of the Vietnam one; the same people made the same mistakes, in precisely the same ways, and everybody was

allowed to conceal his duplicity. In the fall of 1972 I decided to make one last attempt at bringing the shoddiness of American intelligence to the attention of someone, anyone who could do anything about it.

Between October 1972 and January 1973 I approached the U.S. Army inspector general, the CIA inspector general, and the Congress—all to no avail. To the Army inspector general I delivered a memorandum setting forth the details of what had happened to the VC estimate before Tet. I mentioned the possibility of General Westmoreland's complicity, which might have implicated him in three violations of the Uniform Code of Military Justice. The memorandum asked for an investigation, but the inspector general explained that I was in the wrong jurisdiction. Of the CIA inspector general I requested an investigation of the Cambodian estimates, but he adopted the device of neglecting to answer his mail, and no inquiry took place. In a last desperate measure—desperate because my friends at the CIA assured me that Congressional watchdog committees were a joke—I even appealed to Congress. To committees in both the House and Senate that watch over the CIA I sent a thirteen-page memorandum with names, dates, numbers, and a sequence of events. A staff assistant to the Senate Armed Services Committee thought it an interesting document, but he doubted that the Intelligence Subcommittee would take it up because it hadn't met in over a year and a half. Lucien Nedzi, the chief superintendent of the CIA in the House, also thought the document "pertinent," but he observed that the forthcoming elections obliged him to concern himself primarily with the question of busing. When I telephoned his office in late November, after the elections had come and gone, his administrative assistant told me, in effect, "Don't call us; we'll call you."

By mid-January 1973 I had reached the end of the road. I happened to read a newspaper account of Daniel Ellsberg's trial in Los Angeles, and I noticed that the government was alleging that Ellsberg had injured the national security by releasing estimates of the enemy force in Vietnam. I looked, and damned if they weren't from the same order of battle which the military had doctored back in 1967. Imagine! Hanging a man for leaking faked numbers! In late February I went to Los Angeles to testify at the trial and told the story of how the numbers got to be so wrong. When I returned to Washington in March, the CIA once again threatened to fire me. I complained, and, as usual, the Agency backed down. After a decent interval, I quit.

One last word. Some day, when everybody has returned to his senses, I hope to go back to the CIA as an analyst. I like the work. □

"The Cambodian affair seemed to me to be a repeat of the Vietnam one; the same people made the same mistakes in precisely the same ways, and everybody was allowed to conceal his duplicity."

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Appendix III. - Correspondence concerning the existence of the President's Order of September 12, 1975

OTIS G. PIKE, H. V., CHAIRMAN

ROBERT H. GARRAS, CONN.
JAMES V. STANTON, OHIO
RONALD V. WILLIAMS, CALIF.
MORRIS F. MURPHY, ILL.
LEE ARSON, WIS.
DALE BELFORD, TEX.
FREDERICK H. HAYES, IND.
WILLIAM LORAN, FLA.

ROBERT MC CLARY, ILL.
DAVID G. TREISK, LA.
JAMES P. JOHNSON, CALIF.
ROBERT W. KASTEN, JR., WIS.

A. DEANLE FIELD, STAFF DIRECTOR
AARON B. BERNER, COUNSEL

TELEPHONE, (202) 225-6794

Select Committee on Intelligence U.S. House of Representatives Washington, D.C. 20515

18 September 1975

Hon. Henry A. Kissinger
Assistant to the President for
National Security Affairs
White House
Washington, D.C. 20500

Dear Mr. Kissinger:

It is requested that you provide the Select Committee on Intelligence with the following information by the close of business Friday, September 19, 1975:

1. All cables in the period June 1 to August 30, 1974 to and from you or your staff regarding Cyprus, Greece and/or Turkey.

2. All information sent you or your staff designated "NODIS" and relative to this area and period.

3. The names of those National Security Council personnel who assisted you in this area and period.

4. All 40 Committee and Presidential decisions relative to covert action in Cyprus, Greece and Turkey in the period 1970 to date.

Your cooperation will be appreciated.

Cordially,


Otis G. Pike
Chairman

DEPARTMENT OF STATE
THE DIRECTOR OF INTELLIGENCE AND RESEARCH
WASHINGTON

September 19, 1975

Dear Mr. Chairman:

Secretary Kissinger has asked me to respond to your request of September 18 for certain information relating to Cyprus, Greece and Turkey.

The Department will assemble those materials related to the Cyprus crisis during the period in question which deal with intelligence and are thus relevant to the Committee's work. Pursuant to the President's order of September 12, this material cannot be made available to the Committee pending assurance of adequate procedures to safeguard their confidentiality.

Sincerely,

William G. Hyland

Honorable Otis G. Pike
Select Committee on Intelligence
U.S. House of Representatives
Washington, D. C.

OTIS G. PIKE, N.Y., CHAIRMAN
 ROBERT H. CHAMBER, CONN.
 JAMES V. STANTON, OHIO
 DONALD V. BELLAMY, CALIF.
 DONALD P. MURPHY, N.J.
 LEO ADLER, WIS.
 DALE BELFORD, TENN.
 PHILIP H. FAYET, IND.
 WILLIAM LEVYMAN, FLA.
 ROBERT MCCLARY, ILL.
 DAVID S. TRESN, LA.
 JAMES P. JOHNSON, CALIF.
 ROBERT W. KANTON, JR., WIS.

A. GEORGE FIELDS, STAFF DIRECTOR
 JACOB S. BROWER, CHIEF OF STAFF
 TELEPHONE: (202) 225-6761

Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

18 September 1975

Hon. Henry A. Kissinger
 Secretary of State
 2201 C Street, N.W.
 Washington, D.C. 20520

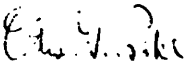
Dear Mr. Secretary:

It is requested that you provide the Select Committee with the following information by close of business Friday, September 19, 1975:

1. All cables in the period June 1 to August 30, 1974 to and from yourself, Deputy Secretary Sisco, I.N.R. Director Hyland, Assistant Secretary Hartman, and regarding Cyprus, Greece and/or Turkey.
2. All information sent you designated "NODIS" relative to this area and period.
3. The names of those National Security Council, State Department, Defense Department and Central Intelligence Agency employees who assisted you, Mr. Sisco, Mr. Hartman and Mr. Hyland in this area and period.

Your cooperation will be appreciated.

Cordially,


 Otis G. Pike
 Chairman

THE WHITE HOUSE
WASHINGTON

September 19, 1975

Dear Mr. Chairman:

We have received your request of September 18 for certain information relating to Cyprus, Greece and Turkey.

In response to your request, we are assembling those materials related to the Cyprus crisis during the period in question which deal with intelligence and are thus relevant to the Committee's work. However, pursuant to the President's order of September 12, these materials cannot be made available to the Committee pending assurance of adequate procedures to safeguard their confidentiality.

Sincerely,



Brent Scowcroft
Lieutenant General, USAF
Deputy Assistant to the President
for National Security Affairs

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

OTIS G. PIKE, D. V., CHAIRMAN

ROBERT H. GARRIS, OHIO.
 JAMES V. STAFFORD, OHIO.
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 DALE DELPOND, TEX.
 PHILIP H. HAYES, IND.
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ROBERT H. CLAY, ILL.
 DAVID G. THOMAS, ILL.
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 ROBERT W. HASTEN, AR., IND.

A. J. WILKINS, STAFF DIRECTOR

A. J. WILKINS, STAFF DIRECTOR

APR 1975 (202) 225-0774

Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

September 22, 1975

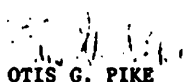
Lieutenant General Brent Scowcroft, USAF
 Deputy Assistant to the President for
 National Security Affairs
 The White House
 Washington, D.C. 20500

Dear General Scowcroft:

I have this day received your letter dated September 19, 1975, and delivered to the office of the House Select Committee on Intelligence at 9:30 p.m. last Friday evening.

Please provide me with a copy of what you refer to as "the President's order of September 12".

Cordially,


 OTIS G. PIKE

OGP:o

THE WHITE HOUSE
WASHINGTON

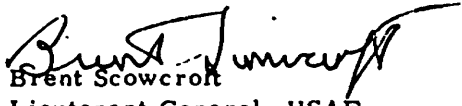
September 29, 1975

Dear Mr. Chairman:

I have your letter of September 22 requesting a copy of "the President's order of September 12" relating to provision of information to the Committee.

The reference in my letter to you of September 19 was to the President's decision reflected in the statement of Assistant Attorney General Rex Lee before the Committee on September 12.

Sincerely,


Brent Scowcroft
Lieutenant General, USAF
Deputy Assistant to the President
for National Security Affairs

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

**Appendix IV.--State Department memorandum of
September 22, 1975**

DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

September 22, 1975

TO: INR - Mr. William G. Hyland
FROM: S - Lawrence S. Eagleburger
SUBJECT: Testimony before Pike Committee

This is to confirm my conversation with Mr. Hitchcock that the following conditions will pertain to sworn interviews by the Pike Committee staff of Messrs. Boyatt, Grant, and Harris:

- The Department of State insists that a State Department representative be present during the interviews. Should the interviewees wish to be represented by their own legal counsel, the State Department representative will be in addition to that private legal counsel.
- The interviewees are to decline, by order of the President, to discuss classified material.
- The interviewees are to decline, by order of the Secretary of State, to give information which would disclose options considered by or recommended to more senior officers in the Department of State.

I would appreciate it if you could ensure that each of the interviewees is shown this memorandum before he appears before the Committee.

cc: L - Mr. Leigh

Appendix V.—Memorandum of Law Prepared by Monroe Leigh, October 3, 1975

MEMORANDUM OF LAW

(Provided by State Department October 3, 1975)

The Deputy Under Secretary of State for Management has issued written instructions to Department witnesses whom the House Select Committee on Intelligence orally requested to appear. In pertinent part, those instructions read:

"The interviewees are to decline, by order of the President, to discuss classified material.

"The interviewees are to decline, by order of the Secretary of State, to give information which would disclose options considered by or recommended to more senior officers in the Department of State."

The Select Committee has requested the legal authority for these instructions.

A. Authority for Instructions

The senior officials of a government agency have broad authority to issue regulations binding upon the agency and its employees. They also have authority consistent with law and regulation to issue orders to subordinate officers.

There are three basic statutory authorities for issuance of regulations:

Section 302 of the Foreign Service Act (22 U.S.C. 811a), provides that the Secretary shall "have authority to prescribe regulations not inconsistent with the Constitution and the laws of the United States in relation to the duties, functions, and obligations of officers and employees of the Service and the administration of the Service."

Sections 3 and 4 of Public Law 73, 81st Congress, as amended, (22 U.S.C. 2656 and 2658) which provide that the Secretary "shall administer, coordinate, and direct the Foreign Service of the United States and the personnel of the State Department..." and "may promulgate such rules and regulations as may be necessary to carry out the functions now or hereafter vested in the Secretary of State or the Department of State..."

These statutes are similar to the laws all agencies have which are the basis for senior officials telling subordinates what to do in their official capacities.

Section 301 of Title 5 United States Code authorizes each head of agency to prescribe regulations for the conduct of its employees and for the custody, use and preservation of its records.

A regulation prescribed by a head of an agency, when not inconsistent with the law, has the force of law (*Caha v. Wright*, 135 F. 947, 68 C.C.A. 505, appeal dismissed 203 U.S. 599 (1905)). A head of agency need not show express statutory authority for an administrative detail incident to a power conferred (*U.S. v. McDaniel*, 32 U.S. (1833)).

The pertinent regulations of the Department of State are found in Volume 5 of the Foreign Affairs Manual. Section 956 pertains to classified information and specifically provides that testimony involving classified information is subject to the procedures for responding to subpoenas and that such testimony, when approved by the appropriate officer (one of whom is the Deputy Under Secretary for Management) "shall be given only under such conditions as the authorizing officer may prescribe" (5 FAM 956 b). The general regulations on subpoenas state that where the purpose is "obtaining testimony regarding information contained in such records [of the Department], the subpoena shall be brought to the attention of the Deputy Under Secretary for Administration [now Management]. ... No response shall be made ... except upon the specific authorization of [designated officials]" (5 FAM 485).

Of course, these laws and regulations do not support arbitrary orders; there must be a significant governmental interest to be served. As to classified information, the interest served is National Security. Executive Order 11652 (37 F.R. 5209) applies to information which "requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States" (section 1). The lowest degree of classification of such information requires a determination that "its unauthorized disclosure could reasonably be expected to cause damage to the national security." (section 1(c)). The order goes on to require that "classified information and material disseminated outside the executive branch under Executive Order No. 10865 or otherwise shall be properly protected." (section 6(b)).

As to the options considered during the policy-making process, and particularly the advice given to senior officials, the interest served is the integrity of the decision-making process. The Government has at least a presumptive interest in protecting it. It is only necessary to recall the words of the Supreme Court in United States v. Nixon (410 U.S. 683, 1975):

"The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution." (At 708)*

One special factor about an order which limits what employees may say is that it must be as narrowly and precisely defined as possible. The rule has been expressed to be that "there appears no compelling interest that relieves the Government of its obligation to define narrowly and with as much precision as feasible the speech which it proscribes." (Meehan v. Macy, 392 F. 2d. 822, 834 (1968)). This is to avoid the "chilling" effect of overbroad and vague restrictions. That court said, however, that "...it is not feasible or necessary for the Government to spell out in detail all that conduct which will result in retaliation. The most conscientious of codes that define prohibited conduct of employees includes 'catchall' clauses prohibiting employee 'misconduct', 'immorality', or 'conduct unbecoming'."

*See also Wilcox, Congress, the Executive, and Foreign Policy, (1971) Harper & Row p. 50; Developments in the Law: "The National Security Interest and Civil Liberties" 85 Harv. L. Rev. 1130, 1218 (1972).

Officers and employees of the government, like any citizens, have a constitutionally protected right to freedom of expression. However, that right may be restricted to the extent necessary to protect the public interest or to carry on public business--e.g. regulation of picketing before a court house to permit free access and exit (Cameron v. Johnson, 390 U.S. 611 (1968)); restricting government employee's political campaigning (United Public Workers v. Mitchell, 330 U.S. 75 (1947)); and dismissing an employee for printing and circulating a pamphlet criticizing his agency's efficiency and conduct (Harrington v. U.S., 161 Ct. Cl. 432 (1963)).

The instructions did not forbid answering all questions and were limited to the two specific areas of official concern. The instructions given the three officers on classified information did not provide detailed criteria, but as officers of the Department and the Foreign Service, they are expected to be familiar with Executive Order 11652 which does contain the criteria for classification. Without advance identification of the questions which would be asked by the Select Committee, it would not be possible to provide more specific criteria. With respect to policy options, the instruction was quite specific and would be understood by even a layman.

The restrictions were not inconsistent with other law. An act sometimes cited in this connection is 5 U.S.C. 7102 which provides as follows:

"The right of employees, individually or collectively, to petition Congress or a member of Congress, or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied."

The act, as indicated by the legislative history, was intended to insure that unjust treatment of government employees would be brought to the attention of Congress (48 Cong. Rec. 4653-54 (1912), id. at 10671; id. at 5000). Thus, the presenting of a petition encompassing job grievances cannot be the basis for disciplinary action. The legislative history does not so clearly reveal the Congressional intention with respect to immunizing the contents of petitions from disciplinary actions.

It is thus for the courts to determine what limitations may be imposed on the contents of petitions to Congress.

This issue was faced in Turner v. Kennedy, 332 F. 2d. 304 (D.D. Cir.) cert. denied 379 U.S. 901. The finding of the trial court upholding dismissal of Turner was affirmed per curiam with only a dissenting opinion. At the least, the opinion confirms that the law does not confer an unlimited privilege. In any event, the officers here were not presenting a petition, the subject did not involve them personally; indeed they were called in their official capacities.

Finally, there is the question of authority to invoke privilege here. As a legal matter such privilege as exists is available to a subordinate employee if his instructions were issued by the head of the agency or by a subordinate authorized by the head of agency in his discretion to issue the instructions to assert the privilege. (Heine v. Raus, 399 F. 2d 785, 791 (1968)).

The President, however, has directed that where Executive Privilege is exercised with respect to the Congress, it must be with his approval. That approval was given generally with respect to classified information. With respect to disclosure of unclassified information in the decision-making process, there is as yet no such approval. However, if all the information were disclosed by testimony, the privilege would be lost. Accordingly, as a preliminary action, while seeking the approval of the President for protecting such information, officers giving testimony can lawfully be instructed to avoid areas which are protectable under the privilege.

B. Authority as to Congress

Although the Secretary and his designated officers may issue lawful orders, when the result is to deny information to the Congress the authority lies in the Constitutional separation of powers.

That there is protection for classified information, particularly intelligence, is well-established. John Jay, writing Federalist Paper No. 64, stated that during the course of international negotiations useful intelligence information might be obtained and that such confidential information should be confided neither to the Senate, which has a constitutional role in the treaty process, nor to the House. (Federalist Paper No. 64, modern library edition, p. 419). The existence of the privilege, its applicability to the decision-making process, and its extent have recently been confirmed by the Supreme Court. In United States v. Nixon, 418 U.S. 683 (1974) the Court said:

"...neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process in all instances. ...when the privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of such conversations, a confrontation with other values arises. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument..." (706)

In the present case, of course, there are both diplomatic and sensitive national security secrets at issue.

While the issue of the extent of Executive Privilege in particular circumstances has only recently been brought to the courts, and so far only with respect to information to be used in court, there are Congressional precedents for directing agency officers to refrain from testifying on particular points. In 1954 the Special Subcommittee on Investigations of the Senate Committee on Government Operations held extensive hearings on a number of issues between the Department of the Army and Senator Joseph McCarthy and his staff. One of the issues concerned a meeting between the Attorney General and other high officials. The meeting, some of the discussion, and the participants were mentioned by a Department of the Army official during the hearing. Eventually written instructions were presented in the form of a letter from the President to the Secretary of Defense which stated, in part:

"Because it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversation or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the subcommittee ...they are not to testify to any such conversations or communications, or to produce any such documents or reproductions. This principle must be maintained regardless of who would benefit by such disclosures." (Special Senate Investigation pp. 1059, 1169, 1248-1287, 1296-1300).

Another such incident was in 1956 in connection with East-West Trade Control Hearings before the Senate permanent Subcommittee on Investigations which covered both classified information and the decision-making process.

Conclusion

I conclude that the instructions of the Deputy Under Secretary for Management were issued under proper legal authority, issued to protect substantial Government interests, as narrowly drawn as the circumstances permitted, and not in violation of the First Amendment or other legal rights of the employees. I also conclude that the instruction to withhold classified information at the direction of the President is a valid exercise of Executive Privilege and the instruction to protect the decision-making process, although not an exercise of Executive Privilege since the President's authorization has not been obtained, is a valid protective measure in an area where exercise of privilege is well-established to obtain the instructions of the President.

/s/ Monroe Leigh

L/M:KEMalmborg;ad
10/1/75

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**Appendix VI. — Materials relating to withholding of information
by the Department of State**

Part A. — Committee subpoena issued on October 2, 1975

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative

You are hereby commanded to summon Henry A. Kissinger, Secretary of
State, or any subordinate officer, official or employee with
custody or control of the items described in the attached schedule,
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis
G. Pike is chairman, and to bring with

him the items specified in the schedule attached hereto and made
a part hereof in the office of the Staff Director of the House

Select Committee on Intelligence, Room B-316 Rayburn House Office
Building

in their chambers in the city of Washington, on or before October 15, 1975

....., at the hour of 10:00 a.m.
produce and deliver said items to said Committee or
then and there to ~~testify touching matters which may be inquired into by said Committee, and he is~~
their duly authorized representative in connection with the
~~not to depart without leave of said Committee~~ Committee's investigation authorized
and detailed by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
2nd day of October, 1975.

Otis G. Pike
Otis G. Pike,

Chairman.

Attest:

[Signature]
Clerk.

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE

The documents and papers described as the Dissent
Memorandum prepared by Thomas Boyatt as Director of Cypriot Affairs
of the Department of State relating to the Cyprus Crisis of 1974.

**Part B.-- Letter from Secretary of State Kissinger to Chairman
Pike, October 14, 1975**

THE SECRETARY OF STATE
WASHINGTON

October 14, 1975

Dear Mr. Chairman:

I have given much thought to the Select Committee's October 2 request that I provide it with a copy of a dissent memorandum, on the Cyprus crisis, sent me by a Foreign Service Officer in August 1974. After careful consideration I have decided that I cannot comply with that request. I respectfully request the Committee to work with me on alternate methods of putting before it the information relevant to its inquiry.

The "Dissent Channel," through which this memorandum was submitted, provides those officers of the Department of State who disagree with established policy, or who have new policies to recommend, a means for communicating their views to the highest levels of the Department. "Dissent Channel" messages and memoranda are forwarded to the Secretary of State, and are normally given restricted distribution within the Department. They cannot be stopped by any intermediate office.

Mr. Chairman, I take this position reluctantly, and only because I have concluded that the circumstances are compelling. I am convinced that I would be remiss in my duty as Secretary of State were I to follow a different course.

The challenges that face our nation in the field of foreign affairs have never been more difficult; the pace of events has never been so rapid; the revolutionary character of the changes taking place around us has seldom been more pronounced. If we are to prosper -- indeed, if we are to survive -- it will require the confidence of the American people and of the nations of the world in the wisdom of our foreign policy and the effectiveness of our foreign policy establishment. Basic to this sense of confidence, of course, is the quality and professionalism of the Department of State and the Foreign Service. And the strength of those institutions depends, to a critical

The Honorable

Otis G. Pike, Chairman,
Select Committee on Intelligence,
House of Representatives.

degree, upon the judgment and strength of purpose of the men and women who serve in them. It is my view that to turn over the dissent memorandum as requested would inevitably be destructive of the decision-making process of the Department, and hence do great damage to the conduct of our foreign relations and the national security of the United States.

Since the founding of the Republic, every Secretary of State has been regarded as the principal adviser to the President in the formulation of foreign policy and in the conduct of foreign relations. If the Secretary of State is to discharge his obligations and duties to the President and the national interest, he must have the benefit of the best available advice and criticism from his subordinates; they in turn, if they are to give their best, must enjoy a guarantee that their advice or criticism, candidly given, will remain privileged.

As the Supreme Court has said: "the importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process."

As the Cyprus crisis evolved, I received many recommendations for various courses of action from my subordinates. Their views were freely offered and fully considered in the policy-making process. But the final choices of what policies to recommend to the President were mine, and they sometimes differed from the courses of action proposed to me by some of my associates. My decisions occasionally led to vigorous dissent, both during meetings with those of my colleagues who disagreed, and in written memoranda, as in the case presently before us. Should the Select Committee so desire, I am prepared personally to come before the Committee to describe in detail the dissenting views put to me, and my reasons for rejecting them.

But were I to agree to release the document requested, even on a classified basis, I would be party to the destruction of the privacy of communication which the Secretary of State must have with his subordinates regarding their opinions. Once the confidentiality of internal communications had been breached, it would be but a short step to public exploitation of the subordinate's views. The result would be to place Department officers in an intolerable position -- at times praised, at times criticized for their views; at times praised, at times criticized for dissenting; at times praised, at times criticized for not dissenting.

Thus, my decision to withhold the document is not based on a desire to keep anything from the Select Committee with regard to the Cyprus crisis or any other subject. On the contrary, the Department and I are both prepared to cooperate with the Committee in the pursuit of its legislatively established purposes. The issue is not what information the Committee should receive; we agree on that question. Rather, the issue is from whom the information should be sought, and the form in which it should be delivered.

It is my strong belief that the Committee should look to the policy levels of the Department, and not to junior and middle-level officers, for the policy information they seek. It is my principal advisers and I who are responsible for policy, and it is we who should be held accountable before the Congress and the American people for the manner in which we exercise the authority and responsibility vested in us by the President and Congress of the United States.

In keeping with this principle I am prepared now, as I have been from the beginning, to do the following:

- Authorize any officer of the Department or the Foreign Service, regardless of rank, to testify before the Select Committee on all facts known by that

officer about the collection and use of intelligence information in foreign relations crises.

- Authorize any policy level officer of the Department or the Foreign Service to testify before the Select Committee on recommendations received by him from his subordinates, but without identification of authorship, and any recommendations he forwarded to his superiors.
- Supply the Committee with a summary from all sources, but without identification of authorship, of views and recommendations on the Cyprus crisis, and criticisms of our handling of it.
- Appear personally before the Committee to testify as to the policy of the United States with regard to the Cyprus crisis, as well as the policy of this Department with regard to the accountability of junior and middle-level officers for their views and recommendations.

The issue raised by the request for the dissent memorandum runs to the fundamental question of whether the Secretary of State should be asked to disclose the advice, recommendations, or dissents to policy that come to him from subordinate officers.

That the nation must have the most competent and professional Foreign Service possible is surely beyond question. It must be the repository for the lessons learned over more than three decades of world involvement; the institution to which each new Administration looks for the wisdom garnered from the past and the initiatives so necessary to cope with the future. It must be loyal to the President, no matter what his political persuasion; it must inspire confidence in its judgment from the Congress, no matter what party is in power there. The Foreign Service, in a word, should be America's guarantee of continuity in the conduct of our foreign affairs.

We now have an outstanding, disciplined, and dedicated Foreign Service -- perhaps the best in the world. It is the continued strength and utility of this institution that will be undermined by revealing the opinions and judgments of junior and middle-level officers.

While I know that the Select Committee has no intention of embarrassing or exploiting junior and middle-grade officers of the Department, there have been other times and other committees -- and there may be again -- where positions taken by Foreign Service Officers were exposed to ex post facto public examination and recrimination. The results are too well known to need elaboration here: gross injustice to loyal public servants, a sapping of the morale and abilities of the Foreign Service; and serious damage to the ability of the Department and the President to formulate and conduct the foreign affairs of the nation. Mr. Chairman, I cannot, in good conscience, by my own failure to raise the issue of principle, be responsible for contributing to a situation in which similar excesses could occur again.

The considerations I have outlined relate to the broad question of testimony from, and documents authored by junior and middle-level officers. The request for a specific dissent memorandum raises a particular issue within that broader framework. The "Dissent Channel," established by my predecessor, had its origin in the recommendations of special Task Forces made up of career professionals from the Department of State, the Foreign Service and other foreign affairs agencies. Two of these Task Forces recommended that improved means be found to transmit new ideas to the Department's decision-makers, to subject policy to the challenge of an adversary review, and to encourage the expression of dissenting views.

The very purposes of the "Dissent Channel" -- to promote an atmosphere of openness in the formulation of foreign policy, to stimulate fresh, creative ideas, and to encourage a questioning of established policies -- are inconsistent with disclosure of such reports to an

investigative committee of the Congress, and perhaps ultimately to the public. Dissent memoranda are, by their very nature, statements of the author's opinions. If their confidentiality cannot be assured, if they are to be held up to subsequent Congressional or public autopsy, the whole purpose of the "Dissent Channel" will have been corrupted and the Channel itself will soon cease to be a viable instrument. Those whose legitimate purpose is to argue with a policy because they sincerely believe it to be ill-conceived, or because they have new but unorthodox ideas, will recognize the Channel for what it has become and cease to use it; those who care little about what the policy is, and even less about seeking to change that policy through the institutional processes open to them, will be encouraged to use the Channel as a tool for their own ends.

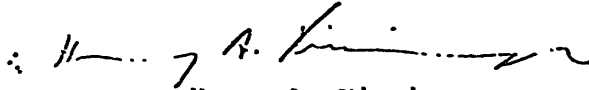
For these reasons, Mr. Chairman, I cannot agree to the release of "Dissent Channel" messages -- irrespective of their contents. I am, however, ready to supply a summary of all contrary advice I received on the Cyprus crisis, so long as it is not necessary to disclose the source of this advice.

Every Secretary of State has an obligation to his country and to his successor to build a professional, effective, dedicated, and disciplined Foreign Service. Were I to comply with the request before me I would have failed in that obligation. I would have been partly responsible for a process that would almost inevitably have politicized the Foreign Service, discouraged courageous advice and the free expression of dissenting opinion, and encouraged timidity and caution.

On another occasion when the State Department was under investigation my great predecessor, Dean Acheson, wrote that there is a right way and a wrong way to deal with the Department of State. "The right way," he said, "met the evil and preserved the institution; the wrong way did not meet the evil and destroyed the institution. More than that, it destroyed the faith of the country in the Government, and of our allies in us."

I am prepared to work with the House Select Committee on Intelligence in a cooperative spirit so that, for the sake of our country, we may jointly, on the basis of the proposals contained in this letter, find the "right" way to accommodate our mutual concerns. I am prepared to meet with the Committee at its convenience to search for a reasonable solution -- a solution which will meet the needs of the Committee, protect the integrity of the Department of State, and promote the effective conduct of the foreign relations of the United States.

Sincerely,


Henry A. Kissinger

**Part C.—Letter from Secretary of State Kissinger to Chairman
Pike, November 3, 1975**

THE SECRETARY OF STATE
WASHINGTON

November 3, 1975

Dear Mr. Chairman:

I very much appreciated the opportunity to meet with you and the members of your Committee last week. The discussion was useful to me, as I hope it was to the Committee. Let me reiterate that my intention is not to withhold any information of use to the Committee or to win a theoretical dispute, but to reach a compromise that protects the legitimate interests of both the Department and the Committee. I remain as determined as ever to do everything possible to assist the Committee in its difficult and important task.

Having heard the concerns expressed by members of the Committee regarding access to documents, I have given much thought to how we might yet find an accommodation that serves our mutual interests, and those of the nation. In pursuance of that objective, I should like to propose that I provide the Committee an amalgamation of State Department documents criticizing our Cyprus policy. This collection of material would include, interspersed among the other paragraphs and without any identification of authorship, the full contents of Mr. Boyatt's memorandum to me.

In this way the Committee will receive the document it requests, while I will have assured that Mr. Boyatt cannot be identified with any particular criticism or recommendation. And no precedents -- either for the Congress or the State Department -- will have been established.

I make this offer, Mr. Chairman, in the hope that an "amalgamation" will prove satisfactory to the Committee; it is a solution that I can support

The Honorable

Otis G. Pike, Chairman,
Select Committee on Intelligence,
House of Representatives.

without question. If this offer is acceptable to the Committee, I will have the promised document in your hands within 48 hours of hearing of the Committee's decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. A. Kissinger", with a stylized flourish at the end.

Henry A. Kissinger

Appendix VII.—Excerpt from “Developments in the Law—the National Interest and Civil Liberties” Harvard Law Review—April 1972

[Pages 1207–1221]

B. Executive Withholding of Information from Congress

In order to appraise the impact of the classification system on the democratic political process, it is necessary also to examine the information available to Congress and the role Congress plays in controlling the exercise of executive power in the fields of national defense and foreign policy. Congress must have information about national security matters in order to carry out its constitutional functions.¹⁴⁴ These include appropriating funds for defense and foreign aid, supervising government expenditures to guard against waste and inefficiency, and evaluating the adequacy of the nation's defense posture and the wisdom of its military commitments to other nations.¹⁴⁵ The Senate must also advise and consent to treaties negotiated by the executive branch. Another important function of Congress is to serve as the focus of public debate on issues of national importance.¹⁴⁶ In recognition of the legislative need to know, officials of the executive branch regularly disclose classified material to Congress on the understanding that confidentiality will be maintained. Nonetheless, in recent years Congress has experienced increasing difficulty in getting information from the executive about the Government's activities and policies in the areas of national defense and foreign policy. In part this stems from the executive's claim of a constitutional right to withhold information from Congress whenever it determines that disclosure would be contrary to the public interest. But the classification system also makes it more difficult to get information the executive branch wishes to conceal.

¹⁴⁴ See Schwartz, *Executive Privilege and Congressional Investigatory Power*, 47 CALIF. L. REV. 3, 9–10 (1959).

¹⁴⁵ SECURITY CLASSIFICATION 25–26.

¹⁴⁶ W. WILSON, CONGRESSIONAL GOVERNMENT 297–98 (1885); Schwartz, *supra* note 144, at 9; *Ervin Hearings* 455, 462 (statement of George Reedy).

1. *Effect of the Classification System on the Availability of Information to Congress.* — A security classification per se is not a ground for denial of information to Congress.¹⁴⁷ Classified information is furnished to congressional committees either in support of executive requests for legislative action, particularly appropriations, or in response to congressional inquiries. A Department of Defense directive declares a policy of making maximum information available to Congress,¹⁴⁸ stating that information not released to the public will be made available to Congress, "in confidence."¹⁴⁹ Testimony concerning classified matters must be stamped as classified and the congressional committee must be informed of the need for security precautions. Oral testimony must be given in closed session and can be released only after approval by a security officer.¹⁵⁰ State Department regulations also provide for disclosure of classified information to Congressmen.¹⁵¹ In addition, the Department holds regular briefings for members of Congress at which classified material is discussed.¹⁵² The executive branch does not investigate Congressmen for security clearances, but congressional staff personnel must be cleared before they are permitted access to classified documents.¹⁵³

A Senate rule provides that documents delivered to the Senate for consideration in confidential proceedings shall be treated as confidential and shall not be disclosed without permission of the Senate.¹⁵⁴ A Senator who violates this rule is subject to expulsion.¹⁵⁵ The House apparently has no formal rules governing the handling of classified information received from the executive branch.¹⁵⁶ Congressmen have a good record for observance of security.¹⁵⁷ There have been few instances of unauthorized dis-

¹⁴⁷ *Moorhead Hearings*, pt. 2, at 682 (statement of David Cooke).

¹⁴⁸ Department of Defense Directive No. 5400.4, Provision of Information to Congress, § III.A.1. (Feb. 20, 1971).

¹⁴⁹ *Id.* § III.B.

¹⁵⁰ *Id.* § IV.A, B.

¹⁵¹ Department of State Uniform State/AID/USIA Security Regulations § 943.1 (1969), in *BASIC DOCUMENTS* 38.

¹⁵² *Moorhead Hearings*, pt. 2, at 921 (statement of William Macomber).

¹⁵³ *Id.*, pt. 2, at 684 (statement of David Cooke).

¹⁵⁴ Senate Rule 35 §§ 3, 5, quoted in *STAFF OF SENATE COMM. ON FOREIGN RELATIONS, 90TH CONG., 2D. SESS., CONGRESSIONAL INQUIRY INTO MILITARY AFFAIRS* 6 (Comm. Print 1968).

¹⁵⁵ *Id.* § 4.

¹⁵⁶ *Moorhead Hearings*, pt. 1, at 36-37.

¹⁵⁷ See *Moorhead Hearings*, pt. 3, at 922 (statement of William Macomber); *Ervin Hearings* 224 (statement of Senator Symington).

closure of classified information.¹⁵⁸

Congressional committees may be an important force in getting information declassified. After an agency's security officer indicates what parts of a transcript of a committee hearing must be deleted for security reasons, the committee may argue for greater disclosure. Some committees have had significant success in persuading agencies that security restrictions were not justified.¹⁵⁹

Despite the large amount of data made available by the executive branch, there is a widespread belief among Congressmen that they do not get the information they need to function effectively. There is a feeling that too often Congress is not informed about executive policies and activities, or at least is not told the whole truth.¹⁶⁰ Congress's dependence on the executive as its sole source of information about the conduct and success of defense and foreign affairs policies creates a danger that it may get a distorted picture. When the administration requests military appropriations or other legislative action, there is probably a very strong tendency to supply the information which puts its proposals in a favorable light or supports its interpretation of the threat to national security, while withholding information which might lead to a contrary conclusion.¹⁶¹

To some extent the problem Congress faces in prying information relating to national security affairs out of the executive is inherent in the nature of the relationships between the two branches of Government. The executive, as the operational branch of the Government, has exclusive knowledge of its own policy decisions and of the details concerning a good deal of its operations. The burden is on Congress to uncover information which an agency does not want to disclose. But the classification system aggravates this problem by sharply limiting the information available to Congress. Congressmen may not even know what questions to ask in attempting to probe the Government's conduct.

¹⁵⁸ Probably the most serious congressional leak was the disclosure by Senator Burton K. Wheeler, an isolationist, of the Navy's occupation of Iceland in 1941 while the operation was still in progress. See Bishop, *supra* note 12, at 486 n.41. Senator Mike Gravel read portions of the top secret Pentagon Papers while judicial proceedings were pending on the Government's request for an injunction banning publication of the documents by several newspapers.

¹⁵⁹ SECURITY CLASSIFICATION 31.

¹⁶⁰ See *Ervin Hearings* 15-16 (statement by Senator Mathias); *id.* at 225-26 (statement of Senator Symington).

¹⁶¹ See *Ervin*, *supra* note 140, at 454-55; Schwartz, *supra* note 144, at 42.

The experience of the Senate Foreign Relations Committee in attempting to find out the extent of American military involvement in Laos illustrates this problem. In a 1969 hearing before the Committee, the American Ambassador to Laos testified that the United States had no military training or advisory units in Laos and that Air America operations were limited solely to transporting equipment for programs under the Agency for International Development.¹⁶² The Ambassador neglected to mention the large-scale bombing missions being conducted by the U.S. Air Force. At later hearings, after the existence of bombing missions became declassified information, the Ambassador was asked about this omission. He explained that he had not been asked any questions about operations in northern Laos.¹⁶³ Senator Fulbright commented: "We do not know enough to ask you these questions unless you are willing to volunteer the information. There is no way for us to ask you questions about things we don't know you are doing."¹⁶⁴

Classification also impairs the assistance Congress can obtain from sources other than the government officials with whom it generally deals directly. Lower level government employees often play a significant role in informing Congress about matters which their superiors think should be kept quiet to avoid embarrassment to the agency. Information from such sources is particularly helpful in uncovering administrative inefficiency and possible corruption.¹⁶⁵ Even when classified information is not involved, there may be strong administrative pressures designed to deter government employees from inconveniencing their agency in this fashion. A well publicized recent incident involved a civilian weapons analyst for the Air Force who testified before the Senate Subcommittee on Economy in the Government on cost overruns

¹⁶² SECURITY CLASSIFICATION 29.

¹⁶³ *Id.* at 29-30.

¹⁶⁴ Quoted in *id.* at 30. The Ambassador's evasiveness at these hearings is just one example of the difficulty the Senate Foreign Relations Committee has experienced in attempting to probe the extent of American military involvement in Laos. The Ambassador also advised Senator Symington, a member of both the Armed Services Committee and the Foreign Relations Committee, not to visit that country because the American military operations were highly classified. *Ervin Hearings* 225. The Senate Foreign Relations Committee eventually found it necessary to send its own staff of investigators to Laos to determine what the situation was. *Id.* at 206 (statement of Senator Fulbright); *id.* at 226 (statement of Senator Symington).

¹⁶⁵ See Note, *The Right of Government Employees to Furnish Information to Congress: Statutory and Constitutional Aspects*, 57 VA. L. REV. 885, 885-87 (1971).

on the C-5A cargo plane. Shortly after his testimony, the Air Force abolished his job.¹⁶⁶ The fact that information is classified increases the pressure on civil servants to remain silent, since leaking information in violation of security regulations may subject them to a more formal system of sanctions.¹⁶⁷

Equally important is the interference by the classification system with the ability of the press to gather information about the Government's activities. The press has investigative resources which far exceed those available to Congress. It can be of invaluable assistance in ferreting out cases of bureaucratic inefficiency, in checking rumors of clandestine military commitments to foreign governments, and in providing information which will permit a more balanced assessment of the success of the Government's policies. When the basic information is classified, it is obviously more difficult for the press to perform this function.

Another problem involves Congress' ability to obtain advice from experts outside the executive branch on requests for military appropriations.¹⁶⁸ Classification of research and development projects often means that the only people who have any expertise on complex new weapons systems are those who have a vested interest in the project. This may leave Congress with no choice but to accept the assessments offered by the military experts as to the necessity for and the effectiveness of the new equipment.

Moreover, even the information which is released by the executive may not be freely available to all Congressmen. Classified information is sometimes kept in confidence by a committee. This means that other members of the Congress must rely on the judgment of that committee.¹⁶⁹ Classified information which is available to all members of Congress may be of only limited utility because security restrictions prevent them from relying on such material in appealing for support of their positions.¹⁷⁰ Hence the executive's ability selectively to disclose classified

¹⁶⁶ *Id.* at 885.

¹⁶⁷ See Exec. Order 11,652 § 13(b), at 5218.

¹⁶⁸ Zagel, *The State Secrets Privilege*, 50 MINN. L. REV. 875, 878 (1966).

¹⁶⁹ This problem is most serious with respect to the Joint Committee on Atomic Energy. The Committee was created by the Atomic Energy Act of 1946, 42 U.S.C. § 2251 (1970), to supervise the Atomic Energy Commission. The Act requires that the Committee be kept "fully and currently informed." *Id.* § 2251. The result has been that information about nuclear policy is given to the Committee to the exclusion of other members of Congress. See *Ervin Hearings* 216-27. See generally H. NIEBURG, *supra* note 3, at 36-37.

¹⁷⁰ See *Ervin*, *supra* note 140, at 436.

information gives it an important advantage against those who oppose its programs.

2. *Executive Refusals to Comply with Congressional Demands for Information: The Executive Privilege.* — Beginning with President Washington, at least twenty-one Presidents have asserted executive privilege to refuse to furnish information to Congress.¹⁷¹ The executive claims inherent constitutional power to withhold documents requested by Congress.¹⁷² This claim has taken on increasing significance in recent years with respect to congressional attempts to probe diplomatic and military activities of the Government.¹⁷³ Reports concerning national defense or foreign affairs matters have been denied Congress either on the ground that they contain highly sensitive military or diplomatic secrets or that they are internal government working papers

¹⁷¹ For a summary of the refusals of 17 Presidents from Washington to Truman to comply with congressional requests, see Department of Justice, *Is a Congressional Committee Entitled to Demand and Receive Information and Papers from the President and the Heads of Departments Which They Deem Confidential, in the Public Interest?*, in *Hearings on S. 921 and the Power of the President to Withhold Information from Congress Before the Subcomm. on Constitutional Rights of the Sen. Comm. on the Judiciary*, 85th Cong., 2d Sess., pt. 1, at 63, 105 (1958) [hereinafter cited as *Department of Justice Study*]. A summary of withholdings under President Eisenhower from 1956 to 1960 is contained in CONGRESSIONAL RESEARCH SERVICE, *EXECUTIVE PRIVILEGE — A BRIEF SURVEY* [hereinafter cited as *CRS SURVEY*]. President Kennedy invoked the executive privilege to withhold information on one occasion. Berger, *supra* note 17, at 1045. W. DeVier Pierson, an Associate Special Counsel to President Johnson, relied on the executive privilege with respect to the President's immediate staff in declining to appear before a congressional committee. *Ervin Hearings* 474. President Nixon has formally asserted executive privilege to deny requested documents on three occasions. He has rejected three requests from administration officials that he authorize withholding. See Letter from Assistant Attorney General Rehnquist to Rep. Moorhead, Sept. 15, 1971, in *Moorhead Hearings*, pt. 3, at 796; N.Y. Times, March 17, 1972, at 7, col. 1. Presidential Assistant Henry Kissinger and his staff have consistently invoked executive privilege in refusing to appear before congressional committees. *Ervin Hearings* 22.

¹⁷² See Memorandum from President Nixon for the Secretary of State, the Secretary of Defense, Aug. 30, 1971, in *Ervin Hearings* 45-46; Memorandum from President Nixon for the Heads of Executive Departments and Agencies (Establishing a Procedure to Govern Compliance with Congressional Demands for Information), Mar. 24, 1969, in *Ervin Hearings* 36-37; *Department of Justice Study* 63, 146.

¹⁷³ *Ervin Hearings* 22, 206 (statements of Senator Fulbright); *id.* at 304-05 (statement of Robert Keller, Deputy Comptroller General); *Ervin, supra* note 140, at 494.

containing advice or policy recommendations.¹⁷⁴ The sensitivity of the documents was a reason given by the Defense Department for refusing to give the Senate Foreign Relations Committee the study of government decisionmaking with respect to the Vietnam War which was later leaked to the *New York Times*.¹⁷⁵ Usually, however, the reason given for withholding is that the materials requested involve internal working papers.¹⁷⁶ It is contended that there is a need to protect material of this sort to ensure that officials feel free to give frank advice to their seniors without worrying about having to answer to Congress for the recommendations they offer.¹⁷⁷ The asserted need to maintain the confidentiality of advice given the President has led to the refusal of members of the White House staff to testify before Congress. While this practice is not new,¹⁷⁸ it has become increasingly important under the present administration because of the greater responsibility the White House staff has assumed for formulating and administering foreign policy.¹⁷⁹

Although the claim of privilege clashes with the judicially recognized power of Congress to compel testimony and the production of evidence in support of a legislative inquiry,¹⁸⁰ the President has generally had his way. Congress has had no effective means of enforcing its will, short of drastic measures which it has been reluctant to take — such as contempt proceedings against an

¹⁷⁴ *Ervin Hearings* 422-425 (statement of former Assistant Attorney General William Rehnquist). Another common ground for executive withholding of information from Congress is the need to protect investigative reports relating to law enforcement efforts. *Id.* at 421.

¹⁷⁵ Letter from Secretary of Defense Laird to Senator Fulbright, Dec. 20, 1969, in *id.* at 37-38.

¹⁷⁶ See, e.g., Memorandum from President Nixon to the Secretary of State, the Secretary of Defense, Aug. 30, 1971 in *id.* at 46; *id.* at 326 (withholding Department of Defense audits from the General Accounting Office).

¹⁷⁷ See *id.* at 320-21; Bishop, *supra* note 12, at 487-88.

¹⁷⁸ Members of the President's staff have refused to appear before Congress at least since the Truman administration. *Ervin Hearings* 474 (Statement of Secretary of State William Rogers).

¹⁷⁹ *Id.* at 21-22 (statement of Senator Fulbright); *id.* at 457-58 (statement of George Reedy).

¹⁸⁰ E.g., *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Watkins v. United States*, 354 U.S. 178, 187 (1957) (power of Congressional inquiry "comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste"); *McGrain v. Daugherty*, 273 U.S. 135 (1927).

officer of the executive branch¹⁸¹ or cutting off appropriations for government activities.¹⁸²

The most extreme claim with respect to the scope of the asserted executive privilege was made during the Eisenhower administration. A study by the Department of Justice argued that while the Congress had a legitimate need for information in order to perform its functions, the furnishing of such information by the executive branch was a matter of comity rather than constitutional duty.¹⁸³ The study further argued that the privilege to withhold information from Congress belonged not only to the President, but also to every department head.¹⁸⁴ Subsequent administrations have taken a more restrained view. Presidents Kennedy, Johnson, and Nixon each pledged that a claim of executive privilege would not be made by department heads without Presidential approval.¹⁸⁵

¹⁸¹ See STAFF OF SENATE COMM. ON FOREIGN RELATIONS, 90TH CONG., 2D SESS., CONGRESSIONAL INQUIRY INTO MILITARY AFFAIRS 7-8 (Comm. Print 1968). The study concluded that either house of Congress had the power to seize an uncooperative officer of the executive branch, try him for contempt, and imprison him in the capitol. *Id.*; see *Journey v. MacCracken*, 294 U.S. 125 (1935); *McGrain v. Daugherty*, 273 U.S. 135 (1927). In 1909 the Senate ordered a Justice Department officer to turn over papers on penalty of contempt. However, President Theodore Roosevelt instructed the officer to turn the papers over to him and informed the Senate that it could get the papers only by impeaching the President. *Department of Justice Study* 173-74.

¹⁸² See *Ervin Hearings* 16 (statement of Senator Mathias); *id.* at 380 (statement of Professor Norman Dorsen). Section 634(c) of the Foreign Assistance Act of 1961, 22 U.S.C. § 2394(c) (1970) provides that funds available under the Act for a project or activity will be cut off if the responsible executive agency has failed either to comply with a request for information about that activity or project by a congressional committee charged with responsibilities under the act or to produce a certification by the President that he has forbidden the disclosure of the requested information, together with an explanation of his action. The Senate Foreign Relations Committee voted to invoke section 643(c) in response to the Defense Department's refusal to produce a five-year plan for the Military Assistance Program. Letter from Senator Fulbright to Secretary of Defense Laird, July 28, 1971, in *Ervin Hearings* 45. President Nixon invoked executive privilege for the five year plan on the ground that it was a tentative working document. Memorandum from President Nixon to the Secretary of State, the Secretary of Defense, Aug. 30, 1971, in *Ervin Hearings* 46.

¹⁸³ *Department of Justice Study* 143-46.

¹⁸⁴ *Id.*

¹⁸⁵ Letter from President Kennedy to Rep. Moss, Mar. 7, 1961, in *Ervin Hearings* 34; Letter from President Johnson to Rep. Moss, Apr. 2, 1965, in *Ervin Hearings* 35; Letter from President Nixon to Rep. Moss, Apr. 7, 1969, in *Ervin Hearings* 36.

Under the procedures established by President Nixon, the head of an agency determines whether there is a need to invoke executive privilege with respect to information requested by Congress. If so, he must confer with the Attorney General. If, after this discussion, either the Attorney General or the agency head is of the opinion that executive privilege is appropriate, the matter will be submitted for Presidential consideration and Congress will be so notified.¹⁹⁸ The President will then determine whether he should invoke executive privilege. In practice, material is often denied Congress without any formal claim of executive privilege.¹⁹⁷ It is common for an agency which does not want to produce documents requested by Congress to seek to satisfy the request by suggesting alternate means of providing the information.¹⁹⁹ It may suggest a briefing on the subject by an officer of the agency's choice¹⁹⁹ or merely remove material before turning files over to a congressional committee.¹⁹⁹ The objection to these procedures is, of course, that they increase the danger that the executive branch will filter the information flowing to Congress, thus undermining the latter's ability to exercise an independent judgment.¹⁹¹

C. External Checks on Executive Secrecy

By vesting great discretion in the executive branch to determine what the public will be told about the Government's policies and activities in the conduct of national defense and foreign affairs, the present classification system creates a danger of serious abuse. Classification may serve as a convenient cloak to cover up bureaucratic mistakes. Secrecy may be used as a weapon to promote support for government policies through classification

¹⁹⁸ Memorandum from President Nixon for the Heads of Executive Departments and Agencies, Mar. 24, 1969, in *Ervin Hearings* 36-37.

¹⁹⁷ See, e.g., *Ervin Hearings* 392-98 (Defense Department denial of request that specified general officers appear as witnesses with respect to inquiry into Army surveillance of civilians); Letter from Secretary of Defense Laird to Senator Fulbright, Dec. 20, 1969, in *id.* 37-38 (refusal to release the Pentagon Papers to Senate Foreign Relations Committee); General Accounting Office, *Summary Listing of Significant Access to Records-Problems in Recent Years*, in *id.* 310-14.

¹⁹⁹ See *id.* at 443-46 (statement of J. Buzhardt).

¹⁹⁹ See, e.g., *id.* at 382-84 (Statement of Senator Tunney).

¹⁹⁹ See, e.g., General Accounting Office, *supra* note 187, at 313. The General Counsel of the Department of Defense stated that in cases where the Department has supplied a committee with a large amount of material on a subject, it does not consider it necessary to seek Presidential authorization to withhold a few documents. *Ervin Hearings* 446.

¹⁹¹ See *Ervin*, *supra* note 140, at 456.

of unfavorable information and dissemination of data which favor the Government's position.¹⁹²

Even absent a conscious attempt to manage the news, the pervasive secrecy with respect to defense and foreign affairs has created a situation where major policy decisions having a far-reaching impact on the nation's security and welfare are made in the isolation of the executive branch without any real opportunity for public discussion.¹⁹³ Decisions to escalate American military involvement at several critical stages of the Vietnam War, for example, were made without public discussion or consultation with Congress.¹⁹⁴ Indeed, intelligent public discussion of such issues is virtually impossible when, as often happens, the basic facts necessary for an informed judgment are classified, with the result that the public may not even be aware of the policy options open to the Government.¹⁹⁵

Insulation of the decisionmaking process from the influence of public debate and criticism has several undesirable consequences. It severely weakens the fundamental democratic role of public opinion as a potential restraint on the great discretion exercised by the executive in the conduct of foreign affairs and defense matters.¹⁹⁶ The absence of vigorous public debate may mean that basic assumptions underlying a policy choice will go unchallenged.¹⁹⁷ The public in turn is likely to have less confidence in policies which have not been openly debated,¹⁹⁸ especially if the reasons for a decision are ill understood or suspect.¹⁹⁹ Moreover, excessive secrecy has begun to undermine the Government's ability to protect really sensitive information. The press does not feel bound by the classification rules, regarding them as merely

¹⁹² *Id.*

¹⁹³ See *Ervin Hearings* 225-26 (statement of Senator Symington on secret American involvement in war in Laos); *id.* at 455-56 (statement of George Reedy).

¹⁹⁴ See *Id.* at 23 (statement of Senator Fulbright).

¹⁹⁵ *Id.* at 361 (statement of former Ambassador W. Averell Harriman).

¹⁹⁶ See *Ervin*, *supra* note 140, at 456; *cf.* *New York Times Co. v. United States*, 403 U.S. 713, 719-20 (1971) (Black, J., concurring); *id.* at 728 (Stewart, J., concurring).

¹⁹⁷ See *Ervin Hearings* 465-66 (statement of George Reedy).

¹⁹⁸ W. WILSON, *supra* note 146, at 299-300; *Ervin Hearings* 456, 469 (statement of George Reedy).

¹⁹⁹ Recent public opinion polls have in fact indicated that a large majority of Americans believe that the Government tries to mislead the public. See *N.Y. Times*, Mar. 17, 1972, at 38, col. 1.

a device through which the Government seeks to manipulate the news. While it agrees that there are some stories which cannot be published because of national security considerations,²⁰⁰ the press is more and more insisting that this is a judgment which it must reserve for itself.²⁰¹ This attitude also seems to be growing among lower level government officials.²⁰²

The remainder of this subsection examines the possibility of providing judicial or legislative checks against executive abuse of the classification system. But before particular problems of judicial review and statutory control can be addressed, we must consider whether there is any constitutional bar to limiting executive discretion both to set the standard for information not to be disclosed and to decide when the standard has been met.

1. *Constitutional Bars to Judicial and Legislative Checks.* — When executive privilege is invoked in order to withhold documents or information from the Congress,²⁰³ or from litigants²⁰⁴ and the courts,²⁰⁵ questions arise as to whether a constitutional privilege exists apart from or even despite legislation and, if so, whether the executive can itself determine when the privilege is applicable. The Constitution does not specifically authorize the executive to withhold information from Congress, and no court has ruled directly on the question whether such a right exists.²⁰⁶ Supporters of the privilege claim that the power to protect records and documents within the possession of the executive and to prevent disclosures which would interfere with the performance of government functions is inherent in the general grant of "executive power" in article II of the Constitution.²⁰⁷ It is also argued that the executive privilege is a necessary corollary of the doctrine of separation of powers, since an unlimited right of legislative inquiry into the affairs of the executive branch would

²⁰⁰ See, e.g., 1963 Hearings 66 (statement of James Reston on press withholding of information about secret U-2 flights over the Soviet Union). At least two newspapers uncovered information about preparations for the Bay of Pigs invasion of Cuba in 1961. Believing that publication would injure national security, the papers suppressed the stories. W. McGARRIN & E. KNOLL, *supra* note 136, at 197-212.

²⁰¹ See, e.g., Frankel Affidavit.

²⁰² See N.Y. Times, Jan. 9, 1972, § 4, at 1, col. 2.

²⁰³ See pp. 1212-15 *supra*.

²⁰⁴ See, e.g., Boeing Airplane Co. v. Cogheshall, 280 F.2d 654 (D.C. Cir. 1960).

²⁰⁵ See, e.g., Committee for Nuclear Responsibility, Inc. v. Seaborg, 40 U.S.L.W. 1249 (D.C. Cir. Oct. 28, 1971).

²⁰⁶ See Bishop, *supra* note 12, at 485.

²⁰⁷ CRS SURVEY 5.

unduly impede the latter's operation and impair its independence.²⁰⁸ The political battles between the executive and Congress over disclosure of information have provided little guidance as to the scope of these asserted powers; they have been essentially tests of strength with the result determined by the superior tactical position of the executive.²⁰⁹ The scope of the executive's inherent power to refuse to supply information to private litigants is likewise unsettled by the courts.²¹⁰ The issue has not arisen because the privilege to withhold state secrets²¹¹ and official papers containing advice²¹² from private litigants was recognized at common law, and these evidentiary privileges have been incorporated in the Freedom of Information Act.²¹³

There can be no doubt of the constitutional necessity for allowing some executive secrets. A right of unlimited congressional or public access to official records or memoranda might unduly interfere with the functioning of the executive branch. The executive must be able to protect itself from political exposure of internal program planning and debates of policy alternatives. Otherwise the independence of the executive branch in the conduct of its constitutional responsibilities might be weakened by subjecting its decisionmaking process to powerful pressures from either Congress or strong interest groups.²¹⁴ The executive must also be permitted to keep sensitive military and diplomatic information from the public in order to protect our defenses and

²⁰⁸ See *Hearings on S. 921 and the Power of the President to Withhold Information from the Congress Before the Subcomm. on Constitutional Rights of the Sen. Judiciary Comm.*, 85th Cong., 2d Sess., pt. 1, at 17-21 (1958) (statement of Attorney General Rogers) [hereinafter cited as *Hearings on S. 921*].

²⁰⁹ See SECURITY CLASSIFICATION 28-29; Bishop, *supra* note 12, at 485.

²¹⁰ But see *Soucie v. David*, 448 F.2d 1067, 1071 n.9 (D.C. Cir. 1971) (dictum) ("The doctrine of executive privilege is to some degree inherent in the constitutional separation of powers").

²¹¹ See 8 J. WIGMORE, *TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW* § 2378, at 785 & n.6 (1940); Zagel, *supra* note 168, at 875-76.

²¹² See *Boeing Airplane Co. v. Cogheshall*, 280 F.2d 654, 660 (D.C. Cir. 1960); C. MCCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* § 144 (1954); *UNIFORM RULES OF EVIDENCE* 34 (1953). The federal courts construed 5 U.S.C. § 22 (1953), as amended, 5 U.S.C. § 301 (1970), which conferred authority on the head of each department to prescribe regulations governing the custody and use of departmental records, as creating a privilege for official records. See C. MCCORMICK, *supra*, § 145; Hardin, *Executive Privilege in the Federal Courts*, 71 *YALE L.J.* 870, 881-82 (1962). However, the statute was amended in 1958 to state that it did not authorize withholding of information. Act of Aug. 12, 1958, 72 Stat. 547.

²¹³ 5 U.S.C. § 552(b)(1), (5) (1970). See p. 1221 *infra*.

²¹⁴ See p. 1192 *supra*.

facilitate the conduct of foreign policy.²¹⁵ Because of Congress' need to know about such matters²¹⁶ and its ability to maintain confidentiality,²¹⁷ there is less justification for withholding information from Congress merely on the ground of sensitivity.²¹⁸ There may, however, be a few secrets so sensitive in comparison with the legislative need to know that withholding information even from Congress would be appropriate. An example might be the details of plans for a tactical military operation before it is carried out.²¹⁹

The constitutional need for some secrecy, however, does not imply that the executive must be given absolute authority to decide when secrecy is required. The fundamental issue underlying the constitutional question whether particular information should be disclosed is who should decide what classes of information should not be disclosed and whether particular information is within one of the classes. The executive has insisted that as a matter of separation of powers it must have the final decision.²²⁰ But the constitutional scheme of separation of powers presupposes that the legislative and judicial branches should have some power to compel the executive to produce information. The rationale underlying the doctrine of separation of powers is the need to preserve all three branches of the Government as viable, independent forces in order to ensure that no one branch achieves a monopoly on political power.²²¹ Vesting in a self-interested executive branch uncontrolled discretion to withhold information about its activities would encourage it to operate behind a curtain of secrecy, relatively free from the checks of legislative inquiry, judicial review, and public opinion.²²² The theory of separation of powers therefore does not require, and may indeed preclude, any deference to the executive which goes beyond permitting the executive to protect specific types of information where disclosure

²¹⁵ See pp. 1190-91 *supra*.

²¹⁶ See pp. 1207-08 *supra*.

²¹⁷ See p. 1209 *supra*.

²¹⁸ See *Ervin Hearings* 318-19 (statement of William Bundy).

²¹⁹ See *id.* at 374 (statement of Professor Norman Dorsen).

²²⁰ See, e.g., *Department of Justice Study* 146.

²²¹ See *Myers v. United States*, 272 U.S. 52, 291-95 (1926) (Brandeis, J., dissenting).

²²² See pp. 1209-10, 1216 *supra*. The privilege for memoranda containing advice and policy recommendations is particularly subject to expansive application, since the vast bulk of reports and memoranda within the executive branch contain some advice. See Schwartz, *supra* note 144, at 6-7.

would unduly interfere with the performance of its duties. In particular, the executive has an interest in preventing disclosures that could deter free debate within the executive branch or could provide sensitive information to an enemy. As long as these legitimate interests in executive secrecy are respected, there should be no constitutional objection to statutory and judicial measures that limit the discretion of the executive in maintaining secrecy. Furthermore, if there is a dispute over whether disclosure requirements infringe legitimate executive interests, the constitutional issue should be resolved by the judiciary — the branch which bears principal responsibility for interpreting the mandates of the Constitution.²²³

The Supreme Court recognized the need for the judiciary to exercise control over executive discretion in *United States v. Reynolds*.²²⁴ In *Reynolds* a plaintiff under the Tort Claims Act²²⁵ sought to discover an Air Force flight accident report. The Government resisted discovery on the ground that the report contained secret information. While recognizing the existence of a common law privilege for military secrets and sustaining the Government's claim of privilege, the Court held that the judiciary must be able to control the evidence in a case and must determine for itself whether the privilege was applicable.²²⁶ In a more recent case, the Court of Appeals for the District of Columbia Circuit also rejected a claim of unreviewable executive privilege.²²⁷ In litigation challenging a proposed under-

²²³ See Berger, *supra* note 17, at 1288, 1354 (1965). It has been argued that a dispute between Congress and the executive over the latter's withholding information from Congress is non-justiciable since it involves a contest of power between two coordinate branches of the Government. See Younger, *Congressional Investigations and Executive Secrecy: A Study in the Separation of Powers*, 20 U. PITT. L. REV. 755, 776-77 (1959). However, in suits involving the rights of private parties, the courts have passed on conflicting constitutional claims by the executive and Congress. *E.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-89 (1952) (seizure of steel mills by President held improper exercise of a legislative function); *Myers v. United States*, 272 U.S. 52, 161-64 (1926) (removal of executive officials is an executive function and cannot be subjected to a requirement of congressional consent). In *Powell v. McCormack*, 395 U.S. 486, 548-49 (1969), the Supreme Court held that the possibility of giving offense to a coordinate branch of the federal government did not justify a court's refusal to pass on constitutional questions when necessary to the decision in a case before it, at least where private rights were at stake. See pp. 1155-57 *supra*.

²²⁴ 345 U.S. 1 (1953).

²²⁵ 28 U.S.C. § 2674 (1970).

²²⁶ 345 U.S. at 9.

²²⁷ *Committee for Nuclear Responsibility, Inc. v. Seaborg*, 40 U.S.L.W. 2249 (D.C. Cir. Oct. 28, 1971).

ground test of a nuclear explosive device, the Government objected to *in camera* judicial scrutiny of the relevant official documents on the ground that its assertion of executive privilege was binding on the court. The court refused to accede to this claim of executive absolutism, because it would hamper the judiciary in the performance of its function of determining whether government officials had complied with applicable statutory and constitutional mandates.²²⁸ Regardless of the merits of the decisions in these cases with regard to the disclosure of information to the litigant or to the court,²²⁹ the judiciary has properly recognized that it, not the executive, must decide whether the executive privilege is properly invoked.

Besides the need to preserve a balance of power among the branches of the Government, there is another reason for the judiciary to make the final determination as to whether withholding is permissible: the need to ensure that the public is informed about the activities of its Government. The right of the public to know what the Government is doing, consistent with legitimate considerations of national security and administrative efficiency, is essential to our democratic system of government.²³⁰ This premise, implicit in the first amendment policy of promoting the broadest possible debate on issues of public importance,²³¹ reinforces the case against absolute executive privilege.

²²⁸ *Id.* at 3249-50.

²²⁹ It is argued below that judicial inspection of documents *in camera* is proper as a general rule. See pp. 1222-23 & note 246 *infra*.

²³⁰ See Parks, *The Open Government Principle: Applying the Right to Know Under the Constitution*, 26 GEO. WASH. L. REV. 1, 7 (1957).

²³¹ See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).